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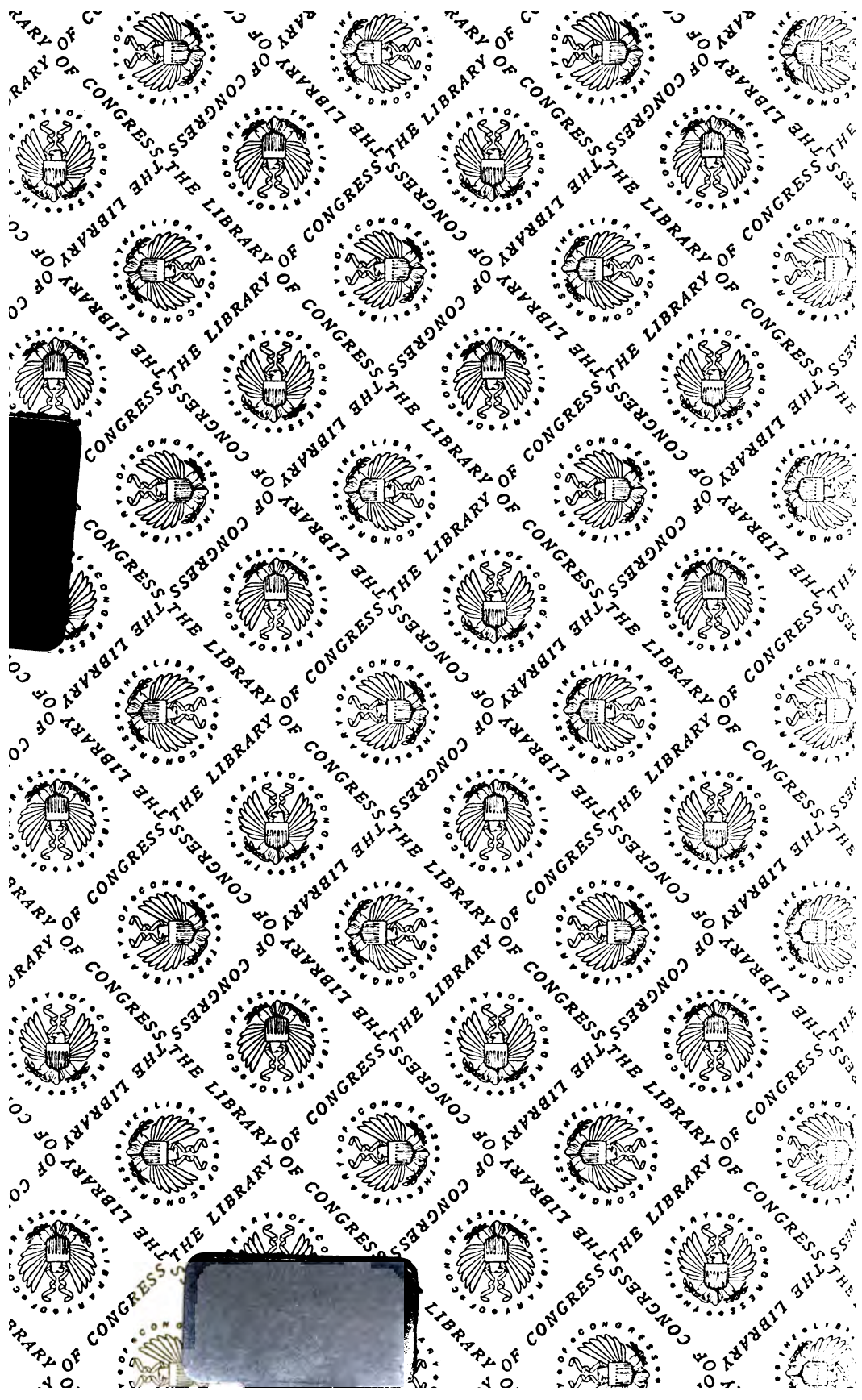
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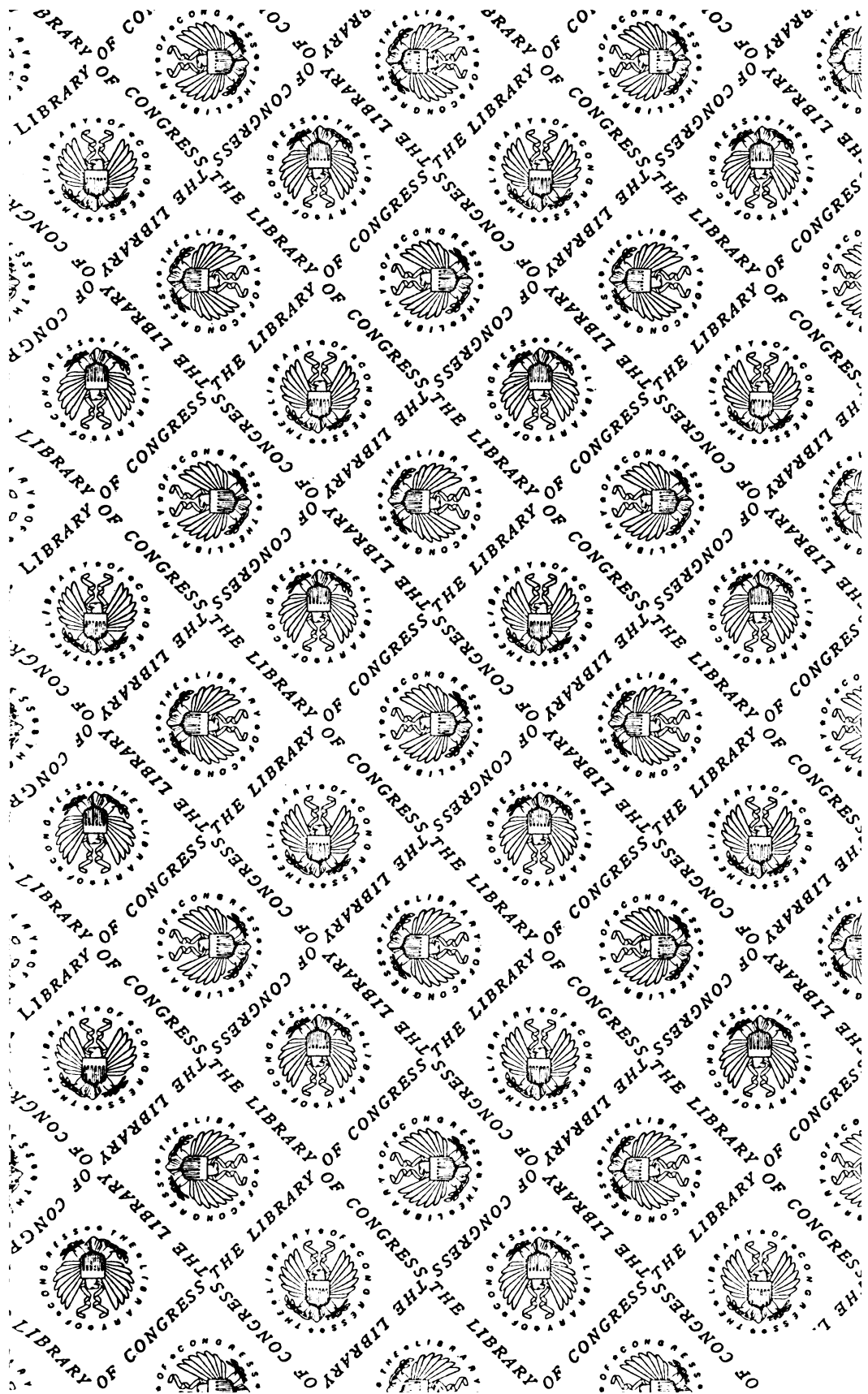
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HEARING

BEFORE THE

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COMMITTEE ON THE JUDICIARY

OF THE

HOUSE OF REPRESENTATIVES,

59TH CONGRESS, 1ST SESSION,

IN RELATION TO

H. R. 3159, H. R. 13055, H. R. 13856, H. R. 16479.

MEMBERS OF COMMITTEE:

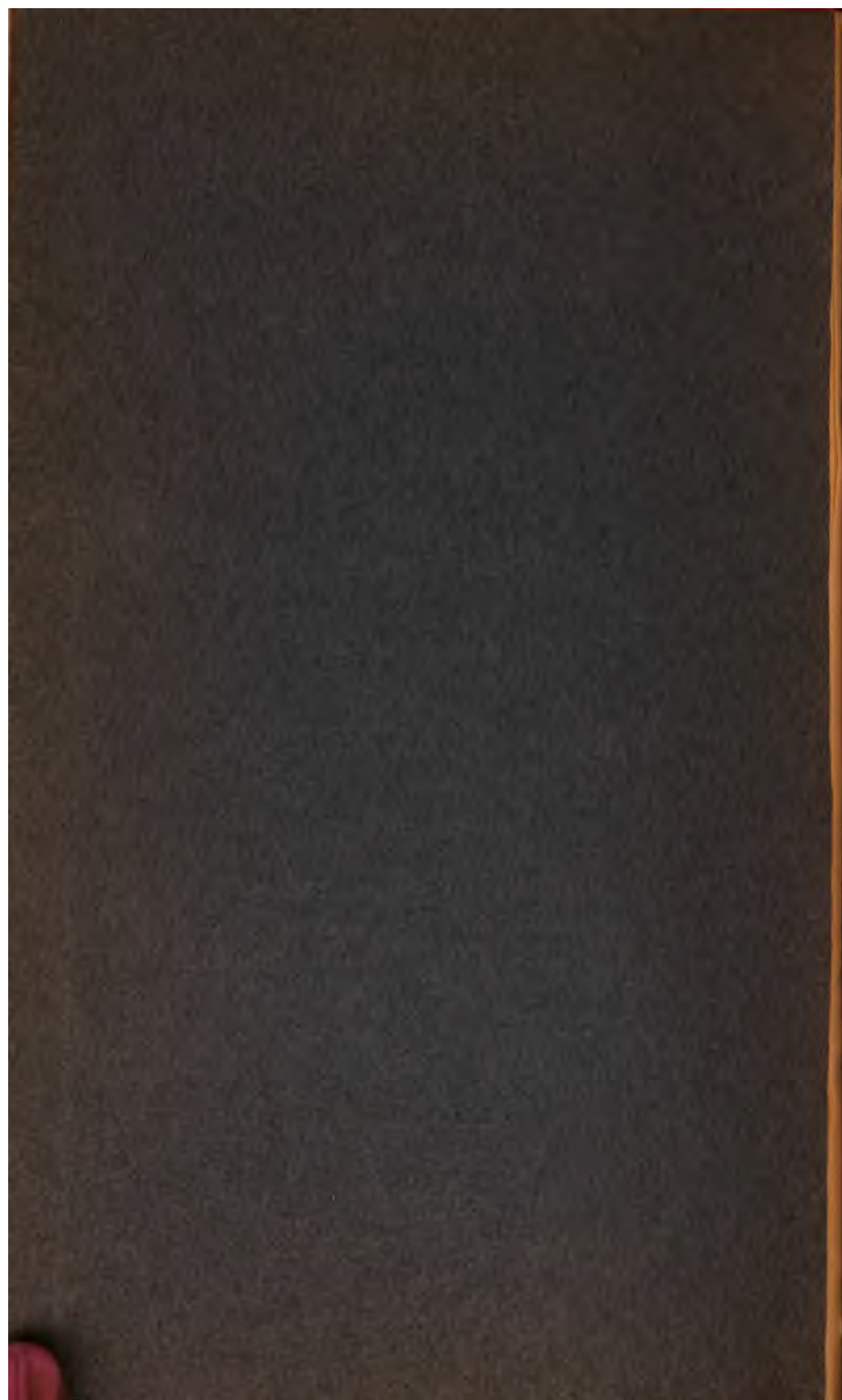
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JOHN S. LITTLE, ARKANSAS.
WILLIAM H. BRANTLEY, GEORGIA.

WASHINGTON:

GOVERNMENT PRINTING OFFICE.

1906.



HEARING

BEFORE THE

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COMMITTEE ON THE JUDICIARY

OF THE

U. S. HOUSE OF REPRESENTATIVES,

59TH CONGRESS, 1ST SESSION,

IN RELATION TO

H. R. 3159, H. R. 13655, H. R. 13856, H. R. 16479.

MEMBERS OF COMMITTEE:

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[H. R. 3159, Fifty-ninth Congress, first session.]

A BILL to limit the effect of the regulation of commerce between the several States and with foreign countries in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory for delivery therein, or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival within the boundary of such State or Territory, before and after delivery, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

SEC. 2. That all corporations and persons engaged in interstate commerce shall, as to any shipment or transportation of fermented, distilled, or other intoxicating liquors or liquids, be subject to all laws and police regulations with reference to such liquors or liquids, or the shipment or the transportation thereof, of the State in which the place of destination is situated, and shall not be exempt therefrom by reason of such liquors or liquids being introduced therein in original packages or otherwise; but nothing in this act shall be construed to authorize a State to control or in any wise interfere with the transportation of liquors intended for shipment entirely through such a State and not intended for delivery therein.

[H. R. 13655, Fifty-ninth Congress, first session.]

A BILL to limit the effect of the regulation of commerce between the several States and Territories in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the interstate-commerce character of all shipments of intoxicating liquors, including ale, wine, and beer, from one State or Territory into another State or Territory shall terminate immediately upon their arrival within the boundary of the State or Territory in which the place of destination is situated and before the delivery of said liquors to the consignee, and said liquors and all corporations and persons engaged in such shipment shall then become subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise: *Provided,* That shipments of such liquors entirely through a State or

Territory and not intended for delivery therein shall not be subject to the provisions of this act, nor shall this act authorize the infringement of the right of common carriers to continuously transport such merchandise from without such State to a station therein.

SEC. 2. That in all such shipments to be paid for on delivery commonly called C. O. D. shipments the sale shall be held to be made at the place of destination, or where the money is paid or the goods delivered.

[H. R. 13856, Fifty-ninth Congress, first session.]

A BILL to prohibit express companies and other common carriers from importing from foreign countries into certain localities of the United States and from transporting from one State into certain localities of another State intoxicating liquors when carried to be delivered with the charge to collect on delivery.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That express companies and other common carriers are prohibited from importing into the United States from any foreign country and from transporting into one State from another State any spirituous, malt, or vinous liquors forbidden by the laws or police regulations of a State to be sold therein, or prohibited by law to be sold in the county or municipality whither they are transported, when such spirituous, vinous, or malt liquors so imported into the United States or so transported into such State, county, or city are carried collect on delivery, or in any manner so that the carrier thereof is charged with the duty of collecting money in payment for the same or of doing any other act as agent for the seller necessary to complete or perfect the sale.

SEC. 2. That any express company or other common carrier which shall violate the provisions of this act shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of five hundred dollars for each offense committed. Any agent of any express company or common carrier who shall, in violation of the provisions of this act, deliver to any person in any such State or community as is described above any of the said articles carried in the manner herein forbidden shall be guilty of a misdemeanor and subject to a fine of not less than twenty-five nor more than one hundred dollars for each offense or to imprisonment for not less than ten nor more than sixty days, or to both fine and imprisonment, in the discretion of the court.

SEC. 3. That this act shall go into effect upon and after the date of its passage.

[H. R. 16479, Fifty-ninth Congress, first session.]

A BILL to make spirituous, malt, vinous, and intoxicating liquors of all kinds, in interstate commerce, a special class in such commerce, and to regulate in certain cases the transportation and sale thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That spirituous, malt, vinous, and intoxicating liquors of all kinds, when a part of interstate commerce, shall be a special class in such commerce, and the transportation and sale thereof shall be specially subject to the control and direction of Congress, and that any railroad company, express company, or other

common carrier, or other person who shall, in connection with the transportation of spirituous, vinous, malt, and intoxicating liquors of all kinds from one State or Territory into another State or Territory, collect on, before, or after delivery, from the consignee or other person, the purchase price, or any part thereof of such liquors, or who shall in any manner act as the agent of the consignor or seller of such liquors for the purpose of selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be subject in so doing to all the police powers of the State or Territory into which such liquors are transported and delivered, and for this purpose in all cases of the sale of spirituous, vinous, malt, and intoxicating liquors of all kinds, in interstate commerce, where the same is sold "Collect on delivery," the place of delivery shall be deemed and held the place of sale.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Wednesday, February 21, 1906.

The committee met at 10.30 o'clock a. m., Hon. John J. Jenkins in the chair.

The committee thereupon proceeded to the consideration of House bills 3159, 13655, 13856, and 16479.

The CHAIRMAN. The committee will be in order. Mr. Dinwiddie will take charge of the side favoring this legislation, and Mr. Hexamer will look after the other side of it. Owing to the fact that Mr. Williams, a Member of Congress, has to go away to-morrow morning, he will be heard first this morning.

We will hear you now, Brother Williams.

STATEMENT OF HON. JOHN SHARP WILLIAMS, REPRESENTATIVE FROM MISSISSIPPI.

Mr. WILLIAMS. Mr. Chairman and gentlemen of the committee, the bill to which I shall direct your attention is H. R. 13856, and I will read it, in order that the committee may fully understand its exact provisions [reading]:

"*Be it enacted,*" etc., "That express companies and other common carriers are prohibited from importing into the United States from any foreign country and from transporting into one State from another State any spirituous, malt, or vinous liquors forbidden by the laws or police regulations of a State to be sold therein, or prohibited by law to be sold in the country or municipality whither they are transported, when such spirituous, vinous, or malt liquors so imported into the United States or so transported into such State, county, or city are carried collect on delivery, or in any manner so that the carrier thereof is charged with the duty of collecting money in payment for the same, or of doing any other act as agent for the seller necessary to complete or perfect the sale."

Section 2 merely prescribes the penalty in accordance with other penalties in the interstate-commerce act.

Now, Mr. Chairman, the object of this legislation, in my opinion, is to do that which was sought to be done by the Congress of the United

States in the enactment of the so-called Wilson Act, which followed upon the decision of the Supreme Court in the so-called Original Package cases, to some parts of which I shall direct the attention of the committee in a moment.

The words of the original Wilson Act are very broad. They subject to the police powers of the States all vinous, spirituous, and malt liquors transported into a State—mark how broad the language is—"for sale, consumption, or storage." Now, Mr. Chairman, it is evident to you as a lawyer that an express company acts as a common carrier up to the point where it has brought the package into the place of delivery. Then, when it holds it there in order that the conditions of delivery may be complied with, it has ceased to act under the liabilities of a common carrier and begins to act under the liabilities of a warehouseman, and it is storing the liquor.

It is also evident to you, Mr. Chairman, that whatever may be the technical law of the case, in the court of ethics and of fact, when one person, natural or artificial, undertakes to perform a service for another and undertakes as a part of that service to do a part of the work which the other man otherwise would have to do, the first person is acting as agent for the second. It is evident that in the court of ethics and of fact an express company which undertakes to deliver certain goods, but, prior to delivery, to see to it that certain payments are made, is acting for the purpose of collecting the money as the agent of the shipper.

It is sometimes well, Mr. Chairman, to know the animus of the witness. I am not a prohibitionist. I sometimes think I would, perhaps, be a better man if I were; but I am not. But I am, perhaps, an almost fanatical advocate of local self-government. I believe thoroughly that the maintenance of liberty everywhere depends upon the very largest possible measure of local self-government, and especially in cases affecting the health and morals of the people, so called police cases; that they ought to be regulated altogether by the locale as far as it is possible to have them regulated in accordance with the laws, including the organic law of the country in which you live. That is my standpoint toward this matter.

It seems to me that the Supreme Court made a mistake in two cases. However, it never lies in a lawyer's mouth to make his guess against the guess of the court, because the court has the last guess and the ultimate guess and the controlling guess about law points.

I want to call your attention first, Mr. Chairman, to this point: In this case of the express company (there were two cases against the State of Iowa, decided at the October term, 1904) the Supreme Court seems to have had it in its mind that a decision in that particular matter might have affected a vast body of commerce, bills of lading commerce, where the collection was to be made later on—all C. O. D. deliveries of every description, no matter what the subject-matter of delivery. It seems to me to have neglected to consider the figure which the Wilson Act itself cut in that matter. Already this particular subject-matter of alcoholic liquors had been segregated, by the Wilson Act itself, from the great body of things which were carried in interstate commerce. Congress had concluded, in its wisdom, that this subject-matter ought to be treated from a different standpoint and in a different way. The Supreme Court seems to me to have taken no cognizance of that matter, and it seems not to have been dwelt upon by the attorneys below, except by one, in a rather cursory way.

Mr. LITTLEFIELD. What are those cases, please?

Mr. WILLIAMS. One of them is the case of the American Express Company *v. Iowa*; the other is the case of the Adams Express Company *v. Iowa*. I will read later on parts of the decisions that will bring out the points I am making.

Mr. HENRY. What report do you read from?

Mr. WILLIAMS. The Original Package Case, in 196 U. S. I will read later the parts of these decisions that in my opinion reenforce what I am saying to you.

A great deal has been said about the power of Congress to delegate to a State, as it is expressed, "the interstate-commerce power." That is not a fair expression of what was sought to be done in the Wilson Act or of what is sought to be done in this bill.

The court having decided that the States, notwithstanding their police power, could not make certain regulations, Congress was resorted to, not to delegate to the States the right to make them, but to make the regulations themselves, and if they happened to be cooperative with the State regulations all the better. That did not vitiate the action of Congress in the slightest degree. And that Congress has power to pass such legislation as it chooses, even though it does it with the express view of aiding the State, there can be, in my opinion, no doubt from reading the Original Package case, certain parts of which I will read later on. In fact, we have already in that case attempted to do what I am trying here to complete.

I understand that in one of Mr. Littlefield's bills there is a provision declaring the situs of a C. O. D. delivery sale to be at the place of delivery; and it may be thought by some of you that that will meet this evil. But I will read you in a moment from this case of the Express Company *v. Iowa* to show you that the court said in that case that however that might be, whatever might be the place of sale, whether in Iowa or whether in Illinois, it was not necessary to pass upon; that the contract for sale and delivery, which was the interstate-commerce contract, undoubtedly took place in the State of Illinois. So that in that case, even if the court had determined that the sale itself was a sale in Iowa, it would still have held that the interstate-commerce clause of the Constitution shielded and protected the transaction, because the contract to sell and deliver was undoubtedly made in the State of Illinois. There is nothing that can meet the evil that I am coming to now except the direct legislation proposed in this bill, although that provision will be of the highest utility in many other ways.

What is the evil? I hear a great many people say that the States are coming to Congress because they are acknowledging their own ineffectiveness and impotency, their own inability, to execute their own laws. There has never been but one thing that has prevented a majority of the counties in the State of Mississippi from executing their local-option laws, and that was the interstate-commerce clause of the Constitution of the United States and the decisions of the courts thereupon. We are not asking you to help execute them, although if we did it would be no shame that we should. Why should it be a charge against national legislation that it is cooperating with State legislation for the purpose of accomplishing a State legislative purpose?

Now, in how far is dealing in liquor lawful and in how far is it unlawful?

It is a lawful business sometimes and sometimes it is an unlawful business. It is not made lawful or unlawful by act of Congress, except in the District of Columbia, the Territories, the military reservations, and on shipboard. It is made unlawful, where unlawful at all, by the act of a State, or, under State law, by the act of a community in a local-option election. Wherever it is unlawful Congress certainly ought not to contribute to its carrying on. It ought not to contribute to its carrying on either by legislative action or by legislative non-action. And that is what the Congress of the United States thought in passing the Wilson Act. That matter I will come to. That the power of Congress to pass legislation of this sort is undoubted I will not say; but that the power of Congress to pass it is the better opinion I will assert, and I think I can show that from the Original Package case. I myself have no doubt about the power of Congress to regulate interstate commerce as fully as it can regulate foreign commerce. They are both given in the same clause in the Constitution in the same breath, and they go exactly to the same limit.

I have no doubt that Congress can regulate interstate commerce except where it clashes against the police power of a State to regulate the public health and the public morals. It seems to me that originally the Supreme Court ought to have held—it did not—that with regard to the sale of liquor it fell in the same category as quarantine matters and matters of that sort, because by the universal consensus of the legislative mind, not only here but in Great Britain and everywhere else in the world, not only among the English-speaking race, but elsewhere, the subject-matter had been set aside in a special category as, in the common opinion, having a tendency to injure public health and public morals. And even those of us who are not total abstainers or prohibitionists know that it has no great tendency to the contrary, at any rate.

Now, Mr. Chairman, upon this question of the impotency of the State, I want to tell the committee something that took place in my own little town. My son-in-law is mayor of the town—quite a young fellow, not a prohibitionist himself, but believing that it is always a gentleman's duty when in official position, to execute the laws whatever they are, whether they are laws that he would have voted for or not. He proceeded to attempt to execute the prohibition laws in that little town. We had about 19 so-called "blind tigers." In less than six months—less than three months, in fact—there were not any, and we went along without any until the Supreme Court decided this very identical case.

Drummers would come there and they would say that they could not get a drink of anything for \$5. You could not pay a hotel porter \$5 and get a drink. It was impossible to get one in the little town. Immediately upon the decision of this case the express company became a warehouse for the receipt and retention of liquor shipped sometimes to A and B and C, sometimes shipped to No. 1 and No. 2 and No. 3, in that way, and this man or that or the other would come around with an authority from the man who was identified by the liquor seller's letter as No. 1, 2, or 3 and get out his jug of whisky. The administration was of course rendered absolutely helpless, because you will see in a moment that the Supreme Court of the United States not only decided in one of these express company cases that the local officer could not seize and destroy the stuff under the State law, but

that the law of the State declaring the keeping of whisky for sale a nuisance could not be executed for the same reason.

Mr. ALEXANDER. May I ask you a question, Mr. Williams?

Mr. WILLIAMS. Certainly, sir.

Mr. ALEXANDER. Suppose you live in a prohibition State and a prohibition county; you go up to Cincinnati and buy a jug of whisky, and pay for it to be shipped to your home.

Mr. WILLIAMS. Yes; this bill does not interfere with that. I am not seeking to interfere with that, and I do not think it ought to be interfered with. Now, right there, the question may be asked why one stands on a different ground from another, and I will tell you.

The man who is ordering a jug of whisky or a case of beer or a case of wine for his own consumption either pays for it or receives it to be remitted for in the ordinary course of business. It is not sent to him C. O. D. There is not one case in a hundred where that is the case. The man who is engaged in the illicit selling of whisky in the community contrary to the law of that particular community generally has it shipped C. O. D. for two reasons: First, I am sorry to say, he is not the character of man that the whisky company would like to credit upon a general account, so he must pay for his goods before he gets them out; secondly, he is generally not the man that can remit for a large quantity of liquor at once. You will find in one of these cases here in the Supreme Court that the shipment was of goods to the value of \$500 or \$600.

Therefore the whisky is shipped to the express company, and the man takes it out as he sells it, or other people take it out as he sells it to them upon his order for delivery, you understand. So that the liquor dealer in the other State is enabled to do business with this man, and he could not do business with him upon any other basis except the C. O. D. basis—first, because the man can not remit (he seldom has a large enough amount of money to pay for a large quantity), and secondly, because the liquor house would not credit him.

Mr. HENRY. Does your State local option or prohibition law attempt to prevent, or do you know of any State local-option law that does attempt to prevent, an individual from shipping liquor into his home for his own consumption and use?

Mr. WILLIAMS. No, sir; and I know of none that does.

Mr. HENRY. Your statute does not touch that point at all?

Mr. WILLIAMS. Oh, no. No law in any State, so far as I know, ever has attempted to do that.

Mr. CLAYTON. You do not think that such a law would be valid, do you?

Mr. WILLIAMS. I do not know whether it would be valid or not. I do not know about that, but I think it would be very unwise and very tyrannical and very oppressive. I do not think any government under the sun has the right to do that. A government has a right to pronounce a business unlawful and illegal and to prevent that business from being carried on if, in the opinion of the government, it is dangerous to public health or morals.

Mr. HENRY. I think several State courts have held that could not be prevented anyhow.

Mr. WILLIAMS. I think it could be prevented; but whether it could or not, nobody has ever thought of doing it.

Mr. GILLET. Would not the bill that you have here have the effect of preventing its being shipped to a person for his own personal use.

Mr. WILLIAMS. Oh, no; no, sir.

Mr. HENRY. Your bill says "to be sold therein," does it not?

Mr. WILLIAMS. Oh, it stops the whole C. O. D. business.

Mr. HENRY. It says "to be sold therein," not for consumption, but shipped into the the State "to be sold therein?"

Mr. WILLIAMS. Yes; but this bill is confined altogether to the C. O. D. business, you understand.

Mr. GILLET. It is a little different from the other bill that was presented?

Mr. WILLIAMS. Yes, sir; it is confined to C. O. D. transactions.

Now, Mr. Chairman, I am addressing a body of lawyers; and, by the way, without giving you any "taffy," I doubt whether there is an equal body of lawyers anywhere much superior to you as lawyers, and therefore it is not necessary for me to go into all the legal details of this matter.

This question is sometimes asked: "If you start upon this legislation, where will it end?" Some gentleman the other day said: "Why, do you think that Congress would have a right to forbid the shipment of flour or meal or bread or meat into a State C. O. D.?" I answered, with that frankness that I attempt always to possess myself of, that I thought Congress would have the power to do it, but that Congress would never be fool enough to do it. And when you ask the question where these things are to end, the answer is: "They are to end where they begin, in the common sense and discretion of Members of Congress, who are sent here by the people, who are not presumed to send fools." It will end where it begins, in the discretion of Congress; and there is no danger whatsoever of Congress ever treating things that are healthful and necessary to life in the same way that it treats things that are per se harmful, or subject to abuse, at any rate, or with a tendency to abuse that makes them harmful.

Mr. PARKER. Why should not all articles delivered C. O. D. be subject to the police power? Take unhealthy flour, or opium, for instance.

Mr. WILLIAMS. Oh, well, if it is unhealthy flour it is already subject to it.

Mr. PARKER. Or take cigarettes, for instance.

Mr. WILLIAMS. If it is unhealthy flour it is already subject to it. I do not suppose there is a State in the nation with any police regulations at all that can not destroy spoiled flour and prevent it from being sold, and not only prevent it from being sold, but punish the man who sells it.

Mr. PARKER. I am speaking of the delivery under interstate commerce; they can not stop it until it is delivered.

Mr. WILLIAMS. Whether they can or not, that would be a question for the discretion of Congress; and the question that I am now putting to your discretion is this particular question.

Mr. LITTLEFIELD. Your proposition is that it would be a question as to whether the occasion existed for the exercise of this broad power?

Mr. WILLIAMS. Oh, of course, if the danger is sufficiently great, if the crisis is sufficiently acute, Congress can exercise the power which it undoubtedly has; and if it is not, Congress will not exercise it. In a matter of this sort it will require great abuse to make Congress exercise it.

Now, Mr. Chairman, the abuse has been there. I know whereof I speak, personally. I am not a prohibitionist, but I do not like the

idea of letting outside authority turn my little town into what it does not want to be. Whether it is wise or unwise to make a local-option law, the law, after it is once put upon the statute books, ought to be executed, and there ought to be no action or nonaction upon the part of the Congress of the United States that would interfere with its execution by the local authorities. What we say here is, Let the State alone; leave it free to execute its law, and to do what, in my opinion, the Wilson Act sought to do, and what the members of Congress who voted for it thought they had done by its enactment.

I do not think there is any trouble about the power. The only question is, Will you exercise the power?

It is said by some—I do not know why—that it will not help the situation. If it will not help the situation, it is rather curious that everybody who is in favor of the execution of the law—the prohibitionist because they are in favor of the law; other people who are not prohibitionist because they are in favor of the execution of law—wants the legislation; while all the liquor sellers and the beer men and the whisky men and the representatives of districts that are devoted to beer selling and whisky selling are opposing the legislation. It seems to me that is sufficient upon that particular point.

Now a few words about the law.

Mr. ALEXANDER. Mr. Williams, your bill does not inhibit the sale of liquor. Liquor may be carried in by an express company and left at a wholesale store?

Mr. WILLIAMS. No, sir.

Mr. ALEXANDER. And then sold?

Mr. WILLIAMS. No, sir.

Mr. ALEXANDER. Your bill does not prohibit that?

Mr. WILLIAMS. My bill does prohibit its being delivered C. O. D. in the prohibition territory.

Mr. ALEXANDER. I know; but suppose it is not delivered C. O. D.

Mr. WILLIAMS. Oh, well, it does not interfere with that. Any man outside can ship liquor in. This interferes only in these C. O. D. cases. The idea in my mind was that in a case of this sort—as a matter of fact and as a matter of ethics the express company is acting as the agent for the foreign liquor seller for the purpose of completing the transaction of sale by collecting the money.

The idea in my mind was that if the State had made the business unlawful there the shield of protection of the interstate-commerce clause ought not to be thrown about a corporation so that it could act as the agent of anybody else in order to do an unlawful thing. In other words, that without legislation of Congress, Congress was helping the liquor seller in the foreign State to violate the law of the State by enabling a common carrier to act as his agent. And as a matter of fact these express companies are engaged in the liquor-selling business as agents of the seller. I do not mean that they get any profit out of selling the liquor, you understand; all they get out of it is their transportation charge; but without them this thing could not go on. They are as necessary a link in the transaction as the original seller or the ultimate consignee.

Now, gentlemen, I want to go back to the old case of *Leisy v. Hardin*, which was the Original Package case. I suppose you all remember the facts in that case. That was a case where intoxicating liquors were seized under the law of the State and were destroyed. There were 122 quarter barrels of beer, 171 eighth barrels of beer, 11 sealed

cases of beer, and the whole value ran up to some nearly \$900. The thing upon the very face of it was not sent to anybody for the purpose of consumption, and it was a fraud *ab initio*. I will not read the facts in the case, because I take it for granted that you all know about what they were. Now, there are some utterances there that I want to call your attention to.

First, to the law of the State. It was said the other day that the States could pass laws. Why, they passed all the laws—and I will read you this particular law in a minute to show you how strict it was. The State of Mississippi punishes the agent of the seller—just exactly what the express company in this case practically is. They have also a punishment for one who acts as agent of the buyer. The express company certainly is one or the other of these two things; and yet, shielded by the interstate-commerce clause, it could not be punished.

This is the State section upon which the Supreme Court decided, and I read it to you to show you how strict it was:

“No person shall manufacture or sell, by himself, his clerk, steward, or agent, directly or indirectly, any intoxicating liquors except as hereinafter provided. And the keeping of intoxicating liquor, with the intent on the part of the owner thereof, or any person acting under his authority, or by his permission, to sell the same within this State contrary to the provisions of this chapter, is hereby prohibited, and the intoxicating liquor so kept, together with the vessels in which it is contained, is declared a nuisance, and shall be forfeited and dealt with as hereinafter provided.”

Certainly the State could not have any more law upon that question.

Then section 1553 of the code of Iowa forbade any common carrier to bring within the State of Iowa for any person or persons or corporations any intoxicating liquors from any other State or Territory of the United States without being first furnished with a certificate under the seal of the county auditor certifying that the consignee or person to whom such liquor was to be transported, conveyed, or delivered was authorized to sell intoxicating liquors in such State. That was declared absolutely unconstitutional, and, in my opinion, it undoubtedly was.

Now let us see the opinion of the court in that case, so that we may come to the exact point. I will read this part of it [reading]:

“The power vested in Congress ‘to regulate commerce with foreign nations, and among the several States, and with the Indian tribes,’ is the power to prescribe the rule by which that commerce is to be governed, and is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution. It is coextensive with the subject on which it acts and can not be stopped at the external boundary of a State, but must enter its interior and must be capable of authorizing the disposition of those articles which it introduces, so that they may become mingled with the common mass of property within the territory entered.

“And while, by virtue of its jurisdiction over persons and property within its limits, a State may provide for the security of the lives, limbs, health, and comfort of persons and the protection of property so situated, yet a subject-matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State, unless placed there by Congressional action.”

Mark that language, now—"unless placed there by Congressional action." [Reading:]

"The power to pass laws in respect to internal commerce, inspection laws, quarantine laws, health laws, and laws in relation to bridges, ferries, and highways belongs to the class of powers pertaining to locality, essential to local intercommunication, to the progress and development of local prosperity, and to the protection, the safety, and the welfare of society originally necessarily belonging to and upon the adoption of the constitution reserved by the States, except so far as falling within the scope of a power confided to the General Government. Where the subject-matter requires a uniform system as between the States, the power controlling it is vested exclusively in Congress and can not be encroached upon by the States; but where, in relation to the subject-matter, different rules may be suitable for different localities, the States may exercise powers which, though they may be said to partake of the nature of the power granted to the General Government, are strictly not such, but are simply local powers, which have full operation until or unless circumscribed by the action of Congress in effectuation of the general power."

I want to call your attention to everything in this decision which shows the power of Congress to act in cooperation with the States. [Reading:]

"Whenever, however, a particular power of the General Government is one which must necessarily be exercised by it and Congress remains silent, this is not only not a concession that the powers reserved by the States may be exerted as if the specific power had not been elsewhere reposed"—

And in making this distinction between these two different subject-matters the court in this case put liquor selling within the second class of those things that were national and those things that were a part of interstate commerce. Now, with regard to that class of things, the court say:

"Whenever * * * Congress remains silent, this is not only not a concession that the powers reserved by the States may be exerted as if the specific power had not been elsewhere reposed, but, on the contrary, the only legitimate conclusion is that the General Government intended that power should not be affirmatively exercised."

In other words, as long as Congress remains silent and does not enact any legislation upon this topic, in the opinion of the Supreme Court of the United States, that is to be construed as the expression of the intention upon the power of Congress that the power should not be exercised by the State, and the action of the State can not be permitted to effect that which would be incompatible with such intention—that is, such assumed intention. [Reading:]

"Hence, inasmuch as interstate commerce, consisting in the transportation, purchase, sale, and exchange of commodities, is national in its character, and must be governed by a uniform system, so long as Congress does not pass any law to regulate it or allowing the States so to do, it thereby indicates its will that such commerce shall be free and untrammelled."

The court goes on to say that in *Brown v. Maryland*, another case, the act of the State legislature drawn in question was held invalid as repugnant to the prohibition of the Constitution upon the States to lay

any impost or duty upon imports or exports, and to the clause granting the power to regulate commerce. They say that in that case Congress had acted, and acted fully, upon the subject of importations, and that case is to be distinguished from some interstate-commerce cases, Congress not having acted fully or at all as to that particular question as to interstate commerce.

Now, there is something else here I want to read you.

The Supreme Court (Mr. Justice Matthews pronouncing the opinion) in the case of *Bowman v. Chicago and Northwestern Railroad* uses this language:

“Any State, Territory, district, city, or town within the United States’ should not be prevented by the language used ‘from regulating or from prohibiting the traffic in or transportation of those substances between persons or places lying or being within their respective territorial limits, or from prohibiting the introduction thereof into such limits for sale, use, or consumption therein.’”

This language, he says, is referred to as indicative of the intention of Congress that the transportation of commodities between the States shall be free, except where it is positively restricted by Congress itself, or by States in particular cases by the express permission of Congress.

I read you that because I want you to see how far the court has gone, not only in the line of saying that Congress could pass affirmative laws which in their spirit and tendency and effect would be cooperative with the State regulation, but that Congress could delegate to the State the power to control the particular question, upon the theory, I suppose, that the action of the State legislature would become just as much the act of Congress as if set out in the act itself. But, at any rate, that is as far as they go in that particular line.

Mr. PARKER. May I ask you a question, Mr. Williams?

Mr. WILLIAMS. Yes, sir.

Mr. PARKER. It is not a release rather than a delegation?

Mr. WILLIAMS. I have just said, a moment ago, that we never had thus far delegated, and this bill does not undertake to delegate; but while I was going into that matter I wanted to show you how far the Supreme Court had “squinted” even, toward that.

Mr. PARKER. But they release that power to the State?

Mr. WILLIAMS. Oh, undoubtedly that is not a delegation. This is an affirmative act of Congress bearing upon a corporation engaged in interstate commerce, and saying that it shall not do a certain thing.

Mr. PARKER. I am not talking of that. Has not Congress the right to release its own power over it to the State, rather than to delegate it?

Mr. LITTLEFIELD. That is, to remove the inhibition?

Mr. WILLIAMS. I am just reading that to show how far the Supreme Court had gone in expressing an opinion just to that effect.

Here, again, let me read this part of the opinion in *Leisy v. Hardin* [reading]:

“The conclusion follows that, as the grant of the power to regulate commerce among the States, so far as one system is required, is exclusive, the States can not exercise that power without the assent of Congress and, in the absence of legislation, it is left for the courts to determine when State action does or does not amount to such exercise, or, in other words, what is or is not a regulation of such commerce.”

Now, gentlemen, I hate to weary you with reading this. I will have to read this, I think, because some of it leads up to the balance; and I can not read the particular thing I want without leading up to it.

In *Mugler v. Kansas* the court said that it could not "shut out of view the fact, within the knowledge of all, that the public health, the public morals, and the public safety may be endangered by the general use of intoxicating drinks; nor the fact, established by statistics accessible to every one, that the idleness, disorder, pauperism, and crime existing in the country are, in some degree at least, traceable to this evil." And that "if in the judgment of the legislature (of a State) the manufacture of intoxicating liquors for the maker's own use, as a beverage, would tend to cripple, if it did not defeat, the effort to guard the community against the evils attending the excessive use of such liquors, it is not for the courts, upon their views as to what is best and safest for the community, to disregard the legislative determination of that question. * * * Nor can it be said that government interferes with or impairs anyone's constitutional rights of liberty or of property, when it determines that the manufacture and sale of intoxicating drinks, for general or individual use, as a beverage, are, or may become, hurtful to society, and constitute, therefore, a business in which no one may lawfully engage."

Now, listen especially to this. I want your attention to this part of it, Mr. Chairman. [Reading:]

"Undoubtedly it is for the legislative branch of the State governments to determine whether the manufacture of particular articles of traffic, or the sale of such articles, will injuriously affect the public, and it is not for Congress to determine what measures a State may properly adopt as appropriate or needful for the protection of the public morals, the public health, or the public safety; but notwithstanding it is not vested with supervisory power over matters of local administration the responsibility is upon Congress, so far as the regulation of interstate commerce is concerned, to remove the restriction upon the State in dealing with imported articles of trade within its limits, which have not been mingled with the common mass of property therein, if in its judgment the end to be secured justifies and requires such action."

That was the language which led to the enactment of the Wilson bill. Mark it:

"But notwithstanding it (that is, Congress) is not vested with supervisory power over matters of local administration, the responsibility is upon Congress, so far as the regulation of interstate commerce is concerned, to remove the restriction upon the State."

That is, that the responsibility was not upon the court, but was upon Congress, as the legislative branch of the Federal Government—

"To remove the restriction upon the State in dealing with imported articles of trade within its limits which have not been mingled with the common mass of property therein, if in its judgment the end to be secured justifies and requires such action."

Then, if you will read on the bottom of page 124 and on the top of page 125, you will find again, without Congressional permission in one case, and in another one the duty is recognized on the part of the Federal Government of frank and candid cooperation for the general good—that phrase is used—the Federal Government ought to engage in a frank and candid cooperation for the general good.

Upon those opinions of the judges in that case the Wilson law was enacted.

I read you a moment ago an extract showing how full the language of that Wilson law is; and yet the Supreme Court has decided in these two cases that that did not accomplish the purposes with regard to this C. O. D. business.

Now let me go to these two C. O. D. cases. Let me read you first the facts in the first of these cases.

"The American Express Company received at Rock Island, Ill., on or about March 29, 1900, four boxes of merchandise to be carried to Tama, Iowa, to be there delivered to four different persons, one of the packages being consigned to each. The shipment was C. O. D., \$3 to be collected on each package, exclusive of 35 cents for carriage on each. On March 31 the merchandise reached Tama, and on that day was seized in the hands of the express agent. This was based on an information before a justice of the peace, charging that the packages contained an intoxicating liquor held by the express company for sale."

Now, remember, it is a well-settled matter of law, though I have not the authority by me now—I need not have for lawyers of your ability—that an express company acts in a double capacity; it acts as a carrier and acts as a warehouseman, and its liability as a carrier ceases when the goods are gotten to the place safely, and then it begins to keep them as a warehouseman, and its liabilities as a warehouseman begin. So that these people charged that these goods were kept by the express company for sale, not in its capacity as a common carrier being kept for sale, but in its capacity as a warehouseman being kept for sale—that is, being kept in their hands until a man came around with a certain amount of money to complete the sale and obtain a right to the delivery.

Mr. ALEXANDER. What decision are you reading from, Mr. Williams?

Mr. WILLIAMS. This is the *American Express Company v. Iowa*, page 134, 196 U. S. I am reading the agreed facts upon which the court decided the case. [Reading:]

"The express company and its agent answered, setting up the receipt of the packages in Illinois, not for sale in Iowa, but for carriage and delivery to the consignees. An agreed statement of facts was stipulated admitting the receipt, the carriage, and the holding of the packages as above stated. The seizure was sustained. Appeal was taken to a district court. The express company and its agent amended their answer, specially setting up the commerce clause of the Constitution of the United States. There was judgment in favor of the express company, and the State of Iowa appealed to the supreme court and obtained a reversal."

That is, the supreme court of Iowa. This writ of error was then prosecuted. Then there follows the argument of counsel, and all that. Now I will read you the decision of the court.

Right here, Mr. Chairman, before I read the decision of the court, remember what the provisions of the Wilson Acts were. It is strange to me that the court does not bring the Wilson Act into consideration in arriving at its conclusion; only one counsel mentions it, and he

merely quotes its provisions. Under the Wilson Act "all fermented, distilled, or other intoxicating liquors transported into any State or remaining therein for use, consumption, sale, or storage, are, upon arrival in such State, subject to the operation and effect of the laws of the State to which they are shipped, and subject to the police powers of such State, to the same extent as domestic property therein, whether such liquors are transported in original packages or otherwise."

Such is the language of the Wilson Act that was passed to cure the difficulty in this very *Leisy* case, the *Original Package* case that I was reading from a moment ago, and in response to the suggestions of the Supreme Court itself that Congress could legislate, and that responsibility was upon Congress for legislating or not legislating.

Mr. Justice White delivered the opinion of the court. [Reading:]

"Although the majority of the supreme court of Iowa doubted the correctness of a ruling previously made by that court, nevertheless it was adhered to under the rule of *stare decisis*, and was made the basis of the decision in this cause. In the previous case it was held by the supreme court of Iowa that, where merchandise was received by a carrier with a duty to collect the price on delivery to the consignee, the merchandise remained the property of the consignor, and was held by the carrier as his agent with authority to complete the sale.

"Upon this premise it was decided that intoxicating liquors shipped C. O. D. from another State were subject to be seized on their arrival in Iowa in the hands of the express company. Sustaining upon this principle the seizure in this case, the supreme court of Iowa did not expressly consider the defense based on the commerce clause of the Constitution of the United States, because the court deemed that its ruling on the subject of the effect of the C. O. D. shipment was a wholly non-Federal ground, broad enough to sustain the conclusion reached. And this the court considered was sanctioned by *O'Neil v. Vermont*, 144 U. S., 324.

"In accord with the opinion of the supreme court of Iowa, it is insisted at bar that this writ of error should be dismissed for want of jurisdiction, because the decision below involved no Federal question, and the case of *O'Neil v. Vermont*, *supra*, is relied upon. The contention is untenable. As pointed out in *Norfolk and Western Ry. Co. v. Sims*, 191 U. S., 441, the view taken of the *O'Neil* case is a mistaken one. True, in that case, the supreme court of Vermont gave to a C. O. D. shipment the effect attributed to by the supreme court of Iowa in this case. True, also, a writ of error was prosecuted from this court to the Vermont court upon the assumption that the commerce clause of the Constitution was involved, but this court dismissed the writ of error because it did not appear that the commerce clause of the Constitution was relied on in the State court, was in any way called to the attention of that court, or was passed upon by it.

As on this record it appears that the protection of the commerce clause was directly invoked in the State court, it is apparent that the *O'Neil* case is inapposite. And as, in order to decide the contention that the judgment below rests upon an adequate non-Federal ground, we must necessarily consider how far the C. O. D. shipment was protected by the commerce clause of the Constitution, which is the

question on the merits, we pass from the motion to dismiss to the consideration of the rights asserted under the commerce clause of the Constitution."

Then the opinion goes on and discusses the case of *Bowman v. Chicago and Northwestern Railway Company*, and discusses *Leisy v. Hardin*, into which I have fully gone a moment ago. Then the opinion takes up *Rhodes v. Iowa*, and that I will read you because it comes in rather pertinently here [reading]:

"In *Rhodes v. Iowa*, 170 U. S., 412, the same doctrine was reiterated, except that it was qualified to the extent called for by the provisions of the act of Congress of August 8, 1890, 26 Stat., 313, commonly known as the Wilson Act. In that case a shipment of intoxicating liquors had been made into the State of Iowa from another State, and the agent of the ultimate railroad carrier in Iowa was proceeded against for an alleged violation of the Iowa law, because when the merchandise reached its destination in Iowa he had moved the package from the car in which it had been transported to a freight depot, preparatory to delivery to the consignee. The contention was that, as by the Wilson Act, the power of the State operated upon the property the moment it passed the State boundary line; therefore the State of Iowa had the right to forbid the transportation of the merchandise within the State and to punish those carrying it therein. This was not sustained."

Of course it ought not to be.

"The court declined to express an opinion as to the authority of Congress, under its power to regulate commerce, to delegate to the States the right to forbid the transportation of merchandise from one State to another. It was, however, decided that the Wilson Act manifested no attempt on the part of Congress to exert such power, but was only a regulation of commerce, since it merely provided, in the case of intoxicating liquors, that such merchandise when transported from one State to another should lose its character as interstate commerce upon completion of delivery under the contract of interstate shipment and before sale in the original packages."

"Completion of delivery under the contract of interstate shipment"—thus sidetracking the question of where the sale took place, and putting it upon the ground of where the contract took place.

Then it goes on to discuss the *Vance v. Vandercook Company* case, which I will skip. [Reading:]

"Coming to test the ruling of the court below by the settled construction of the commerce clause of the Constitution, expounded in the cases just reviewed, the error of its conclusion is manifest. Those cases rested upon the broad principle of the freedom of commerce between the States and of the right of a citizen of one State to freely contract to receive merchandise from another State, and of the equal right of the citizen of a State to contract to send merchandise into other States. They rested also upon the obvious want of power of one State to destroy contracts concerning interstate commerce, valid in the States where made. True, as suggested by the court below, there has been a diversity of opinion concerning the effect of a C. O. D. shipment, some courts holding that under such a shipment the property is at the risk of the buyer, and therefore that delivery is completed when the merchandise reaches the hands of the carrier for transportation"—

"At the risk of the buyer, and, therefore, that delivery is completed

when the merchandise reaches the hands of the carrier for transportation." That would make it a sale in the State whence it was shipped. [Reading:]

"Others deciding that the merchandise is at the risk of the seller, and that the sale is not completed until the payment of the price and delivery to the consignee at the point of destination."

After stating that—I call your especial attention to this, Mr. Littlefield—after stating that, and this diversity of opinion, it says:

"But we need not consider this subject. Beyond possible question the contract to sell and ship was completed in Illinois. The right of the parties to make a contract in Illinois for the sale and purchase of merchandise, and in doing so to fix by agreement the time when the condition on which the completed title should pass, is beyond question. The shipment from the State of Illinois into the State of Iowa of the merchandise constituted interstate commerce. To sustain, therefore, the ruling of the court below would require us to decide that the law of Iowa operated in another State, so as to invalidate a lawful contract as to interstate commerce made in such other State; and, indeed, would require us to go yet further and say that, although under the interstate commerce clause, a citizen in one State had a right to have merchandise consigned from another State delivered to him in the State to which the shipment was made, yet that such right was so illusory that it only obtained in cases where in a legal sense the merchandise contracted for had been delivered to the consignee at the time and place of shipment.

"When it is considered that the necessary result of the ruling below was to hold that wherever merchandise shipped from one State to another is not completely delivered to the buyer at the point of shipment so as to be at his risk from that moment the movement of such merchandise is not interstate commerce, it becomes apparent that the principle, if sustained, would operate materially to cripple if not destroy"—

Mr. Chairman, this is what I called your attention to a moment ago. The court seems to have left completely out of consideration the fact that Congress had already segregated this particular subject-matter from other subject-matters upon which interstate commerce operated; and it seems to think that if they had decided in a liquor case with the Wilson Act upon the statute book that this C. O. D. delivery was a sale within the State, and therefore unlawful by the Wilson Act itself, that it would affect all other sorts of commerce. (Reading:)

"It becomes apparant that the principle, if sustained, would operate materially to cripple if not destroy that freedom of commerce between the States which it was the great purpose of the Constitution to promote."

What I want to do in this bill is to go further and again segregate, so that there may be no doubt of construction, even, about the proposition that the forbidding of this particular subject-matter from being transported into a State C. O. D. and thereby effecting a sale within a State contrary to the laws of the State, does not affect any other matter at all. It seems to me that no fair construction could hold that it would, taking into consideration the former action of Congress in the case of the Wilson bill, and the intimation of the court that led up to that action of Congress. But there will be, if this bill is passed, no

doubt upon that question. It applies to nothing but this particular subject-matter; and as the *expressio unius est exclusio alterius* says, it would strengthen the position and the construction by excluding from the operation of a like construction other articles of commerce.

Mr. ALEXANDER. Mr. Williams, have you observed this brief that has been submitted to us on the Hepburn-Dolliver bill by the Brewers' Association?

Mr. WILLIAMS. No, sir; I have not.

Mr. ALEXANDER. I was going to say that it did not seem to me that your position is different from the position they take.

Mr. WILLIAMS. It seems to you that it is different—is that what you say?

Mr. ALEXANDER. As to 196 United States, under this decision.

Mr. WILLIAMS. Oh, that it is not different. I do not know as to that, sir; I have not read it. I have not had time to look into these other matters. (Reading:)

“It would prevent the citizen of one State from shipping into another unless he assumed the risk; it would subject contracts made by common carriers and valid by the laws of the State where made to the laws of another State, and it would remove from the protection of the interstate-commerce clause all goods on consignment upon any condition as to delivery, express or implied. Besides, it would also render the commerce clause of the Constitution inoperative as to all that vast body of transactions by which the products of the country move in the channels of interstate commerce by means of bills of lading to the shipper's order with drafts for the purchase price attached, and many other transactions essential to the freedom of commerce, by which the complete title to merchandise is postponed to the delivery thereof.”

Now, Mr. Chairman, that is the last, I think.

Mr. BIRDSALL. Will you permit a question?

Mr. WILLIAMS. Yes, sir.

Mr. BIRDSALL. I suppose Congress might have power to provide that no merchandise should be shipped C. O. D.?

Mr. WILLIAMS. It might do it, I suppose; but, as I said a moment ago, a free government of people who govern themselves by their representatives would not be foolish enough to do it.

Mr. BIRDSALL. I understand that, but that case seems to have lost sight entirely of that principle.

Mr. LITTLEFIELD. That eliminates the Wilson law practically altogether.

Mr. WILLIAMS. Absolutely. It does not take it into consideration, except that in construing another case it says that that was decided on the Wilson law.

Mr. LITTLEFIELD. It seems to ignore the existence of the Wilson law.

Mr. WILLIAMS. Now, let me go ahead just a moment:

“As from the foregoing considerations it results that the court below erred in refusing to apply and enforce the commerce clause of the Constitution of the United States, its judgment must be reversed.”

That is the first of these cases.

Mr. BRANTLEY. Is it not true that your bill eliminates any question of conflict between the police power of a State and the commerce power of Congress? Your bill is not a release of any power [by Congress?

Mr. WILLIAMS No; it is an affirmative act by Congress.

Mr. BRANTLEY. It is a direct regulation by Congress of interstate commerce?

Mr. WILLIAMS. It is a direct regulation by Congress of interstate commerce. It is a direct regulation by Congress, and in the only way in which it can be said to have any connection with State regulation at all. It is not a delegation; it is not a release; it is affirmative legislation by Congress, acting within the powers conferred upon Congress by the Constitution to regulate interstate and foreign commerce. The only way in which it can have any connection with State legislation is that it is cooperative in intent, and would be cooperative in effect, with the police regulation of the States; and certainly that is not a sin; that is a virtue. As the Supreme Court says, there ought to be a frank and cordial cooperation for purposes of public good.

Mr. BRANTLEY. Well, Mr. Williams, why not amend your bill so as to say simply that common carriers should not carry C. O. D. any intoxicating liquors from one State into another? That would be a direct regulation without reference to whether a State prohibited the sale of liquor or not.

Mr. WILLIAMS. That is another matter. There again I am a local self-governor. If the community into which the stuff is being shipped allows it to be sold there, I do not think it would be fair and right to forbid a fellow outside of the State from selling it thereto. It is what some people have called my fanatical devotion to local self-government that inspires this bill.

In a community where the stuff is forbidden to be sold, I would forbid it to be carried C. O. D., because practically, ethically, and as a matter of fact it is a sale in that place where the States try to prohibit it. Where the State does not try to prohibit it, where it is a lawful business, allowed by the State or by the community, there is no more reason why a foreign liquor seller should not sell there than there is why a domestic one should not.

Mr. PALMER. This bill does not stop a man from buying liquor if he pays for it when he gets it, does it?

Mr. WILLIAMS. Oh, no; nor does it stop him from ordering it of the liquor house from crediting it, if it chooses; but these "blind-tiger" people are the sort of fellows, you know, that have no credit, and are generally the sort of people that can not pay cash in large amounts. This bill would not interfere with any man's buying liquor in the ways I have just stated.

Mr. CLAYTON. Your bill is solely to break up this C. O. D. business?

Mr. WILLIAMS. It is solely to break up the C. O. D. business, and it is solely to break it up, because practically and actually down there these express companies are engaged in the liquor business. I do not mean they are getting profit out of it, but I mean that they are engaged in it, and they are getting a profit in this way, too, from the carriage, and this very sort of thing is multiplying their carriage very much, so that to a certain extent they are getting a profit out of the business.

Now, gentlemen, there is another thing: Of course, I do not like, when I am aguing a question upon its merits, to bring in any sort of outside considerations to operate as a pressure upon the opinion of those who are to judge whether a given course shall be taken or not. But in some counties in Mississippi and in Louisiana public sentiment

has risen to that point of revolt where I have been afraid that some breach of the peace would take place in order to stop it. Our people are not a very patient sort of people when they think that they are being defied. One express company, I am glad to say, took the high position that it would not engage in the traffic, and it will not let the manufacturers ship the stuff in there. Another one is making a bar-room out of itself in every place, and some of the agents have become frightened and refuse to receive and deliver the stuff, thinking, perhaps, I reckon, that they might be tarred and feathered. But public sentiment is getting to a very high pitch upon the question, and I do not know but what that is a legitimate matter of consideration, too, in connection with the Supreme Court injunction that there ought to be a frank and cordial cooperation. One reason why there ought to be is that when people can not do a thing that they have a right to do by law, they will sometimes do it without law.

Mr. PARKER. May I ask you a question?

Mr. WILLIAMS. Yes, sir.

Mr. PARKER. Have you considered the question whether your bill, as you have drawn it, is not an exercise of police power by the United States?

Mr. WILLIAMS. Oh, yes; I have considered that. It is not. It has nothing to do with the punishment for selling liquor. It has nothing to do with punishing anything excepting a common carrier engaged in interstate commerce doing a certain thing which Congress has the power to forbid being done.

Mr. LITTLEFIELD. Your bill is a regulation of interstate commerce?

Mr. WILLIAMS. Absolutely a regulation of interstate commerce.

Mr. PARKER. I think there is some question on that. Now, I want to put another question—whether it is necessary to prohibit all C. O. D. deliveries, or whether this point would not be met by simply saying that all C. O. D. deliveries, or deliveries otherwise than to the original consignee, should be subject to the law of the State?

Mr. WILLIAMS. No, sir; that would not be sufficient, for this reason. Mr. Parker: It would leave a place for “blind tigers” big enough for a coach and four to go through. You would have to go into the question, then, as to what the man’s intent was in getting the whisky—whether it was to consume it or to sell it, or what not; and you could not do that. It seems to me that it would be impracticable of execution.

Mr. PARKER. Why would it be? I do not quite see that. If liquors are shipped C. O. D., and it is enacted that the delivery of liquor from one man to the other shall be subject to the police laws of the State if it be shipped C. O. D. or if it be delivered to any assignee of the bill of lading, it seems to me that you have hit that matter; because it can only be delivered to the man who originally ordered it, and it is subject to the law of the State.

Mr. WILLIAMS. Oh, well, it can be delivered now. That is just the trouble. That would not cure the evil. You sit down there, for example, and you order the dealers to send you a case of claret. It is pretty evident that you are getting that case of claret for consumption. Suppose you sit down and order them to send you three barrels of beer and thirteen cases of claret and a barrel of whisky. You are the consignee and, of course, under the amendment that you would suggest you would not take the goods out.

Mr. PARKER. No; not of course.

Mr. WILLIAMS. And then the State would have to go to work to watch you; and yet it is very evident from the face of the thing that you are getting those things to sell.

Mr. PARKER. I do not see that, because the State makes any delivery by way of sale illegal; and if the delivery is made subject to the law of the State it is a sale, then, within the State.

Mr. WILLIAMS. Well, I would rather not have that amendment. Of course you gentlemen of the committee are better lawyers than I, and this matter is going to be left with you; but I would rather not. I think that would make the bill ineffective.

Mr. BRANTLEY. Is it true that if your bill becomes a law the people of Mississippi will be relegated for protection against the very evils that they are now complaining of to the United States courts, the United States Government, and would still be as helpless to protect themselves as they were before?

Mr. WILLIAMS. No, no; I think not. I have thought of that, too, Mr. Brantley. Of course, as far as their present powers are concerned, under the police power of the State they would remain in statu quo. That is undoubtedly true. Then, as far as this law is concerned, of course you can not pass a Federal law making a punishment to be inflicted by a State tribunal. That would be impossible. It is true that the punishment—the penalty here—has got to come through the United States courts. But any citizen of Mississippi could make the complaint before a Federal grand jury for the violation of this Federal law, and before the State grand juries or justices of the peace for the violation of the State law. Thus far you are right. There are two tribunals necessary to execute the entire body of the law—this cooperative legislation and the original State legislation. But I do not think that it would be, in spirit, open to the objection that you make.

Mr. CLAYTON. Your bill is just to meet this one particular abuse?

Mr. WILLIAMS. This one particular point; yes.

Mr. CLAYTON. In the operation of the interstate-commerce law, or interstate commerce?

Mr. WILLIAMS. Yes, sir. These people having shielded themselves behind the interstate-commerce clause of the Constitution, and the Supreme Court having decided that it was a legal shield, I merely want Congress to pass a law regulating the matter so that it shall no longer remain a shield.

Mr. CLAYTON. You do not claim that this bill will entirely eradicate or make impossible the "blind tiger" business?

Mr. WILLIAMS. Oh, no.

Mr. CLAYTON. But you think it will go in that direction?

Mr. WILLIAMS. But I do say this: I will say that in any little town, for example, it would do it. We absolutely destroy them until after this decision was pronounced back at the October term, 1904; and then, within less than ten days after that decision, they were shipping the stuff there until the express company was filled up high with it, from Illinois and Missouri and everywhere else—St. Louis, Chicago, Peoria, and everywhere.

Mr. CLAYTON. I think it would go a good way toward remedying it.

Mr. WILLIAMS. Now, then, just one more word, and I am through.

The next one of these two cases follows the first one, on page 147 of 196 U. S. It is just like the other one, except that in that case the

State resorted to a different method of asserting its power over the subject-matter. This was an indictment against the Adams Express Company, and the other one was an indictment against the American Express Company. In the other case, you remember, they took the goods and destroyed them, or held them, rather, for destruction, and a bond was given. They were not actually destroyed under the prohibition law. In this case they proceeded under that clause of the prohibition law which makes keeping them with a view to sale a nuisance. This was an indictment against the Adams Express Company in the court of Iowa for maintaining a nuisance in violation of a section of the code of that State.

"It was charged in the indictment * * * that the Adams Express Company between July and December, 1900, at St. Charles, Madison County, Iowa, used a building for the purpose of selling intoxicating liquors therein, contrary to law, and that the company owned and kept in said building intoxicating liquors with the intent unlawfully to sell them within the State, contrary to an Iowa statute."

The Iowa law had a penalty against the renting or use of a building, you understand, for the purpose of keeping for sale intoxicants.

"There was a plea of not guilty, a trial and verdict of guilty, and a sentence imposing a fine of \$350 and costs. An agreed statement of facts was stipulated, from which it appears that the Adams Express Company was a common carrier, engaged in the express business between the States of Missouri and Iowa."

I need not read the balance of it. That case went up to the Supreme Court under this decision.

"On appeal to the supreme court of Iowa from the judgment of conviction the action of the trial court was approved upon the authority of the case of the State of Iowa against the American Express Company, and at bar it was conceded that the issues in this case 'are identical in every particular' with those which were involved in that case. As we have just reversed the judgment of the supreme court of Iowa in the American Express Company case, it follows, for the reasons stated in the opinion in that case, that the judgment in this must also be reversed."

I simply call your attention to this to show that there is no new law involved in it at all. It went up on a different State statute, but on the same great principle—to wit, that a matter of regulation of interstate commerce, and not the mere assertion of police power, was involved.

Mr. Chairman, I thank you and the committee very much for your attention.

STATEMENT OF ROBERT CRAIN, ESQ., ATTORNEY AT LAW, OF BALTIMORE, MD.

Mr. CRAIN. Mr. Chairman and gentlemen of the committee: The same general principle and the same objections, from a constitutional standpoint, to the bill which has just been discussed by Mr. Williams are involved in what is called the Hepburn-Dolliver bill.

The CHAIRMAN. Some of the gentlemen of the committee would like to know who you are and who you represent, Mr. Crain.

Mr. CRAIN. I represent the United States Brewers' Association as its general counsel. That association comprises 95 per cent of all the brewers of the country.

I have taken the trouble at this hearing to reduce to writing my remarks for the purpose of saving time; also thinking that at least the new members of the present committee might care to examine the law as we see it from our standpoint, and I think probably the quickest way would be for me to read what I have written in that connection. It will not take very long.

"This bill, popularly known as the Hepburn-Dolliver bill, is an attempt to amend an existing law known as the Wilson bill, passed August 8, 1890, by adding ten words to it; but so far-reaching is the legal and practical import of this apparently trifling amendment that if it should become a law and be upheld by the courts it will, in the judgment of many lawyers, have as far-reaching effect on the organic nature of our State and Federal Government as any law placed on the statute books since the civil war. It has now been before Congress for several sessions and its iniquities and supposed virtues have been pretty well thrashed out, but this brief synopsis of objections is filed in the hope that it may be of some service to the new members of the committee:

"The present bill owes its existence to the following facts: Some years ago when one of those reform waves that seem to move in cycles swept over the country, the reform microbe fastened itself on the so-called liquor curse, and a number of States passed prohibition laws, by virtue of which they undertook to prohibit all importations into the State of liquor from other States."

I may say here, in passing, gentlemen, that the bill which Mr. Williams has just discussed has the same object in view as this Hepburn-Dolliver bill and the same object as the bill introduced by Representative Littlefield—to wit, to prevent the shipment of alcoholic liquors into prohibition States. So the discussion of this Hepburn-Dolliver bill is applicable alike to the Williams bill and to the bill introduced by Representative Littlefield, excepting in minor instances, which I shall point out as we proceed with the discussion.

"The question of the constitutionality of one of the features of this State prohibitory legislation came up in the case of *Leisy v. Hardin*, where it was held that spirituous liquors are recognized articles of commerce."

It is well for you to note in this connection, gentlemen (because Mr. Williams took occasion to read this *Leisy v. Hardin* decision at some length), the real points which the court decided and the points which it merely discussed.

In the *Leisy and Hardin* case it was held that "spirituous liquors are recognized articles of commerce and that under the interstate-commerce clause of the Constitution a citizen of a prohibition State has the right to import intoxicating liquors from another State and has the right to sell it in original packages:

"Whenever the law of the State amounts essentially to a regulation of commerce with foreign nations or among the States, as it does when it inhibits, directly or indirectly, the receipt of an imported commodity, or its disposition before it has ceased to become an article of trade between one State and another or another country and this, it comes in conflict with a power which in this particular has been exclusively vested in the General Government, and is therefore void."

"Immediately after this decision the Prohibitionists, following a somewhat illogical and contradictory intimation in this opinion, introduced into Congress and had passed the Wilson bill, which is the

present bill practically verbatim, with the words 'for delivery therein,' 'the boundary of,' and 'before and after delivery' left out. That is, it provides:

"* * * That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory (for delivery therein), or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival within (the boundary of) such State or Territory (before and after delivery), be subject to the operation and effect of the laws of such State or Territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

"This act was sustained on May 25, 1891, by the Supreme Court in the case of *Wilkerson v. Rohrer* (140 U. S., 572) as a valid regulation of interstate commerce by Congress; but when the act again came before the court in *Rhodes v. Iowa* (170 U. S., 415) on a different question, it held that 'arrival in the State' meant delivery into the hands of the consignee."

In passing, so that we may carry the two bills along together, I will say that the object of Mr. Williams's bill is to prevent the interstate shipment from reaching the hands of the purchaser. The supreme court in this *Rhodes* case plainly says that the interstate shipment continued until it reached the hands of the consignee or the purchaser.

Mr. TIRRELL. May I ask you a question? Did not the court say, in that case of *Rhodes v. Iowa*, that you must consider all the facts appertaining to that particular case, and that the court only decided on all the facts of that particular case, and that the question as to what arrival meant should be determined by the facts of each case?

Mr. CRAIN. No; not at all. I do not think you can find any such thing in the case. I have read that case over about twenty times, and I do not think there is any such thing in the case at all.

Mr. TIRRELL. Did it not say, in substance, that all of the statement of facts was to be considered, and not any detached statement of facts, in arriving at that decision?

Mr. CRAIN. I have quoted from this decision further on at length. That decision said in plain language that the only reason why the Wilson bill was constitutional was because Congress never intended to stop the shipment of liquor until it reached the hands of the consignee.

Mr. WILLIAMS. Would the gentleman mind reading the law upon which he bases that assertion?

Mr. CRAIN. Yes, sir; I will, with a great deal of pleasure, read that. I think we will come to all that as we go along.

"But when the act (of Congress) again came before the court, in *Rhodes v. Iowa*, on a different question, it held that 'arrival in the State' meant delivery into the hands of the consignee, and that therefore the power of the State could not attach to a shipment of intoxicating liquors from another State 'whilst the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery there to the consignee.'"

I am quoting the words of the decision.

Mr. TIRRELL. That was the opinion of the court there—a majority opinion?

Mr. CRAIN. Yes, sir.

Mr. TIRRELL. And there were three judges who dissented from that opinion, were there not?

Mr. CRAIN. I think so. I take it for granted that if it was a decision by the Supreme Court somebody dissented.

Mr. TIRRELL. But you would not be sure, would you?

Mr. CRAIN. Yes; I am sure that in this Rhodes case and in all of these cases there was a dissenting opinion. I will not say it was by three, but probably by three.

Mr. TIRRELL. With the court changed as it is now, you would not be sure that they would decide as the majority did, would you?

Mr. CRAIN. I would not declare positively that the Supreme Court would render a unanimous opinion on any of these questions, because it has not been in the habit of doing it. But we will reach that later.

Mr. WILLIAMS. Mr. Chairman, if the gentleman will permit me, I understood the gentleman to say a moment ago that the Supreme Court somewhere decided that the only reason why the Wilson Act was constitutional was because it did not interfere with the delivery to the consignee. I asked him if he would read the law that supported that assertion. Now, I assert that that case went upon the ground that that was as far as the Wilson bill went, and that nowhere does the Supreme Court say that that is the only reason why the Wilson Act was constitutional. Now, if you will read that act from the Supreme Court you will see.

Mr. CRAIN. In the Rahrer case the plain question was presented as to the constitutionality vel non of the Wilson Act, and the court said that the Wilson Act was constitutional. When the Rhodes case came along, and the Vance and Vandercook case—of course the Rhodes case was on a different point—the court used the exact language which I have put into this brief. It said:

“Whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee”—delivery in the State to the consignee.

Now, the court said in that case, as I think you will see, Mr. Williams, if you will read it over, if you have not read it lately (I have read it several times)——

The CHAIRMAN. Mr. Crain, some of your friends are objecting to your being interrupted.

Mr. CRAIN. Well, I do not object to it.

The CHAIRMAN. I simply wish to state that if you are going to get into personal conversations with gentlemen present, it is impossible to prevent interruptions. You will either have to address the committee or confine yourself to personal remarks. I am saying this for your benefit.

Mr. CRAIN. All right.

The CHAIRMAN. If the gentlemen discussing this matter do not want to be interrupted, they will have to say so. It is very difficult for the committee to control a matter of this kind. I am only saying now that you had better address yourself to the committee and not to any particular gentleman, so that you will not be so liable to interruption.

Mr. CRAIN. Very well.

“The present bill is designed to overcome this just and equitable interpretation of the Supreme Court by providing that State liquor laws shall become operative upon a shipment of liquor immediately

upon its 'arrival within the boundary of such State or Territory before and after delivery.' In other words, the mere physical arrival of the liquor on the boundary of any State shall make it subject to the operation of State laws, and shall enable any State to empower its officials to confiscate it or destroy it or do as they please with it regardless of the purposes for which it is intended, or of the rights of any individual or of the consignor or consignee."

Now I undertake to discuss what the bill is not.

"Having stated what the bill is, it may be well to state what it is not. "There is a sort of insidious simplicity and superficial fairness about it that has a tendency to mislead. Its advocates claim that it is simply a proposition to give to the States the right of local self-government, the right of a majority in any community to make their own laws and enforce them."

Quoting from a speech made by Mr. Clayton, the distinguished member of this committee, when this matter was under discussion on the 27th of January, 1903, he said:

"In other words, this amended bill is simply a proposition to restore to the States in this matter full and ample power to enforce their police regulations against the sale of intoxicating liquors; that is the whole question."

"Now, this is precisely what it does not do. It gives the States something to which, under the Constitution, we maintain they are not entitled, and to which, for the reasons to be set forth, they ought not to be entitled."

MR. CLAYTON. Will you permit me, right there, in fairness to myself, to read you this extract from the report that I presented to the committee on this Hepburn-Dolliver bill? Speaking of the case of *Leisy v. Hardin* —

MR. WILLIAMS. What page do you read from?

MR. CLAYTON. I am reading from the report the committee made at the last session, on page 6. If you have not a copy of it, I have a copy of it here. It is the report that I presented for the committee on the Hepburn-Dolliver bill at the last session of Congress. Speaking of the *Leisy v. Hardin* case, the report goes on to say:

"To avoid the effect of this decision, and to remove an obstacle resulting from the exclusive control of Congress over commerce among the States, preventing the full operation and effect of the police regulations of the States in regard to intoxicating liquor, Congress passed the act of August 8, 1890, which is hereinbefore set out in this report. It was enacted, using the language of Chief Justice Fuller, 'simply to remove an impediment to the enforcement of the State laws in respect to imported packages in the original condition created by the absence of a specific utterance on the part of Congress.'"

That is the end of the quotation. Then the report goes on to say:

"In other words, this act is in pursuance of the power of Congress to regulate interstate commerce and was held not to be a delegation of this power to the States, but the exercise by Congress of a power confided to Congress. It is not disputed that Congress can not delegate such a power for any purpose whatsoever, and it is equally well established that any act of Congress which invades the reserved province of the police power of the State under a mere pretext that interstate commerce is in some way affected is without constitutional authority and void."

I wanted that position of the committee and my position as well in regard to this legislation to be stated. I wanted the grounds upon which its constitutionality is rested to be correctly stated, and the extract that you have made from the speech attributed to me on the floor of the House did not state correctly or fully the grounds upon which the committee predicated the constitutionality of this legislation.

Mr. CRAIN. The bill gives the States something to which, under the Constitution, we maintain they are not entitled and to which, for the reasons to be set forth, they ought not to be entitled.

"It is also claimed that the only object of this amended bill is to correct the misinterpretation of the Supreme Court and to make the Wilson bill say what Congress intended it to say. An examination of the record does not bear this out. On the contrary, it is clear that all its advocates intended was to enable a State to cut out the right of sale in the original package and not to interfere with the right of shipment. The effort of the Prohibitionists of Iowa to read into this bill an authorization to interfere with a shipment in transit or before it arrived and was delivered to the consignee was clearly an afterthought. The discussion of the Wilson bill, as it appears in the Record of the first session of the Fifty-first Congress (p. 7427), shows that Congress intended it to mean just what the Supreme Court said it does mean.

"Our opposition to this measure rests on a number of grounds, which may be briefly summarized as follows: (1) There is no necessity for it."

Mr. DINWIDDIE. Mr. Chairman, I did not want to do this or did not expect to do it; but I shall be perfectly willing to have anybody from the other side correct me or to answer any questions which will throw light upon the matter. I wonder if Mr. Crain would permit me just a question, which I think will throw some light upon the statement he has just made. Have you any objection, Mr. Crain?

Mr. CRAIN. Not at all, if it is the pleasure of the committee.

Mr. DINWIDDIE. In regard to the statement about the State of Iowa attempting to read into this legislation something after the passage of the Wilson law, do you not know that it is a fact that the statute of Iowa that you refer to was enacted long after the Bowman and Leisy decisions were made and was never modified, and it simply was the legislation of Iowa for years and years past and gave rise to the original Bowman decision, and that then the Leisy decision—which was the original-package case—gave rise to the passage of the Wilson law?

Mr. CRAIN. I do not understand that to be the fact.

Mr. DINWIDDIE. Well, that is the fact just the same.

Mr. CRAIN. Mr. Dinwiddie, that does not change my statement at all. As a matter of argument, I proceed upon the theory that notwithstanding these local statutes of the State of Iowa, which were enacted as you say before the decisions in the *Leisy v. Hardin* case, the Bowman case, and these other cases, that when those statutes in Iowa were passed and the *Leisy v. Hardin* case came along and made a nullity of them because of the original-package idea, and when your friends had the Wilson bill enacted into law the one thing, in our judgment at least, that you had in mind was that when these goods became commingled with the masses of the goods in the States

and after they had reached their destination, then the local police regulations of those several States should apply. We take the position that it was not in the minds of our prohibition friends that they could seize these goods before they became commingled with the general mass of property in the several States.

We say that there is no necessity for this bill.

"The present law as interpreted already gives the States all the power they need or would in reality be able to exercise under this bill. (2) It is vicious legislation, likely to have an effect opposite to that intended. It is indirect and unfair, and aims to obtain by subterfuge and chicanery what Congress would never grant if openly asked for. (3) It is a gross interference with the rights of personal liberty. (4) It would involve serious financial loss and ruination to various important interests that have grown up under the protection of the Constitution and the law of the land. And (5) lastly and conclusively, it would be unconstitutional."

Mr. PALMER. Well, that is the proposition. Just demonstrate that, and you need not bother about the rest.

Mr. CRAIN. "The last of these objections will be considered first, in order that the legal aspects of the question may be properly emphasized, and it will be maintained that the bill, if it became a law, would be bad, (1) as a delegation of power to the States; (2) as enabling States to pass laws which would have an extraterritorial effect, and (3) as impairing various rights guaranteed to the citizens of the several States by the Constitution itself.

"It is apparent that this bill goes to the very root of the question as to the relative rights of the State and Federal governments in regard to interstate commerce and as to the delimitations that must mark the commercial power under the Federal Constitution and the police power under the State constitutions, and as this question is to-day looming large on the horizon in connection with much other proposed legislation, it deserves to be said that Congress can not afford simply to ignore the legal principles involved and leave it to the Supreme Court to determine questions of constitutionality *vel non*. The advocates of this bill argued at the last session of Congress, 'If it is unconstitutional, why oppose it? Why not let the Supreme Court say so?'

"Such argument should not have any force with this committee. As Chief Justice Marshall said in *Gibbons v. Ogden*: 'The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess, * * * are the real restraints upon which the people rely for protection from bad laws. 'They are the restraints on which the people must often rely solely in all representative government.' The duty of Congress is not to make work for the Supreme Court, but to pass constitutional laws. The constitutional question in a narrow as well as a broad sense, the question of your power under the Constitution and of the effect of this bill on the organic law, as well as the questions of advisability and expediency, are therefore properly before you.

"The constitutional question in a narrow legal sense is more difficult than it is in the sense of a broad statesmanship. The power to regulate interstate commerce has in these latter days come to be the most important power in the hands of Congress, and should be jeal-

ously guarded. To forecast the views of the Supreme Court on a bill of this character involves a study of many decisions, and carries one through a maze of perplexing judicial contradictions and non sequiturs; but recent decisions bearing on interstate commerce indicate that the court is fully alive to the importance of preserving to Congress that absolute and exclusive control over it to which it is legally, historically, and economically entitled.

"Our present form of government, it need hardly be recalled, owes its existence to the necessity that was felt by the original colonies for some control of commerce by a national body. The Articles of Confederation collapsed because of their failure to take this control away from the constituent members, and as early as 1778 we have New Jersey petitioning the Revolutionary Congress for a meeting 'to consider the regulation of commerce.' Mr. Witherspoon's famous resolution in the Continental Congress, in 1781, dwells on this, and a special committee of that body in 1785 emphasized the need of Congress possessing 'the sole and exclusive power' of regulating trade, not only with the Indians, as the articles provided, but with the several States and all foreign nations as well. The compact between Virginia and Maryland relative to the navigation of the Potomac River and the Chesapeake Bay, and the report of the committee thereon, led to the call by the Virginia legislature of the convention of Annapolis in 1786 'to take into consideration the trade of the United States, to examine the relative situation in the trade of the States, and to consider how far a uniform system in their commercial relations may be necessary to the common interests and their permanent harmony.'

"Out of this meeting grew the call signed by John Dickinson, chairman, for a constitutional convention 'having for its object the consideration of the trade and commerce of the United States,' and out of which grew our present Government. So that, as Daniel Webster said in his great brief in *Gibbons v. Ogden*: 'This Government owes its immediate origin to the necessity of regulating commerce between the States,' comparatively trifling as commerce then was. It is more and more the one tie that binds our statehood fabric, and this committee may well consider deeply before it passes any law which involves any fundamental departure from established ideas.

"To reach any intelligent conclusion as to the probable opinion of the Supreme Court on this bill, it is necessary to analyze the different views that at different times have possessed that august body. The first contentions that came before the court were as to what extent the States had surrendered to Congress all control over commerce between them. Had they concurrent power? Or was that of Congress exclusive? While Congress was silent could the States act? Could Congress authorize the States to act? Could the police powers of the States affect commerce? Has the Federal Government any police power, etc.?

"Down to 1849 the commerce clause had come before the Supreme Court in only five cases. Of these the leading one was *Gibbons v. Ogden* (9 Wheat., 1), and if the far-sighted and masterful reasoning of Chief Justice Marshall in his comprehensive opinion in that case had never been departed from, much confusion would have been

avoided. The case decided nothing more than that a State regulation of foreign or interstate commerce contrary to a law of Congress is void, but the opinion in its entire scope covers the present controversy. The contention between the famous opposing counsel was as to whether the control of interstate commerce was exclusively in Congress, or whether the States had concurrent power. The case having been decided on other grounds, this point was not passed upon; but the Chief Justice made it clear that he regarded it as being exclusive.

"The opinion in *Brown v. Maryland* (12 Wheat., 415), although deciding on other grounds, again confirms his opinion as to exclusive control. The *Black Bird Creek Marsh* case (12 Pet., 245), which is usually cited to show that Marshall changed his opinion and recognized a concurrent power in the States, is easily reconciled, and is probably more in line with the very last decisions of the court than any other. While *Black Bird Creek* was navigable, the right of the State to pass any law affecting the same, in the manner involved in the case, was clearly placed on the ground of a health measure. While in a measure it affected commerce, it did not regulate it. 'The repugnancy of the law of Delaware,' he says, 'to the Constitution is placed entirely on its repugnancy to the power to regulate, * * * a power which has not been so exercised (in this case) as to affect the question.' The Delaware law incidentally might under certain contingencies affect commerce within that State on that stream, but it did not regulate it or affect interstate 'intercourse' or trade.

"The next case which comes before the Supreme Court was the *Milne* case (11 Pet., 102), which is sometimes cited as recognizing a concurrent power in the States, although it decided nothing more than that, as a police measure, a State can pass certain quarantine regulations. Indeed, the dissenting opinion of Judge Story in this case ought to set at rest any question as to Marshall's view on the exclusive character of Congress's control over interstate commerce. Story went so far as to hold that the exclusive control of Congress was so absolute that 'a State can not make a regulation of commerce to enforce its health laws, because it is a means withdrawn from its authority;' and he adds: 'Such is a brief view of the grounds upon which my judgment is that the act of New York is unconstitutional and void. In this opinion I have the consolation to know that I had the entire concurrence upon the same grounds of that great constitutional jurist, the late Chief Justice Marshall.'"

Then we come, gentlemen, to the other days, following this thing along in a historical way.

"The reaction against the broad construction tendencies of those days, and of Marshall, Storey, and others in particular, probably explains the change of view that appears in Taney's day in the *License* cases, which next came before the court. Three cases went up in one record, the one interesting us most being the *Pierce* case (5 How., 504). New Hampshire required anyone who wished to sell liquor to obtain a town license. *Pierce* imported from Massachusetts a barrel of gin and sold it in the original package without a license, and was convicted therefor. He claimed that a State law requiring a license for the sale of imported liquor in the original package was void as a regulation of interstate commerce. Taney, C. J., upheld the law on the ground that Congress having passed no law regulating the sale of

liquors from other States, this law did not conflict and that the power of the States over commerce in such a case was concurrent. From the 'silence' of Congress this deduction was made. In later decisions we shall see that exactly the opposite meaning was given to Congressional silence."

Then we go on to discuss the *Pierce* case, following it along with *Cooley v. Port Wardens*, and come to the latter part of that decision. We find that when the justice was explaining the ruling of Chief Justice Marshall, he said:

"Now, the power to regulate commerce embraces a vast field containing not only many but exceedingly various subjects quite unlike in their nature, some imperatively demanding a single uniform rule operating equally on the commerce of the United States in every port, and some, like the subject now in question, as imperatively demanding that diversity which alone can meet the local necessities of navigation," etc.

Then the decision goes on to distinguish between the nature of this power and the nature of the subject to which it extends. I do not care to read the whole of that.

(At this point the committee took a recess until 2 o'clock p. m.)

ARGUMENT OF ROBERT CRAIN, ESQ., OF BALTIMORE, MD.

Mr. CRAIN. Mr. Chairman and gentlemen, as general counsel for the United States Brewers' Association I desire, with your permission, to present as briefly as possible some of the reasons why the so-called Hepburn bill should not become a law. In the short time at my disposal I can merely suggest some of them.

From an economic and temperance standpoint I think this bill is thoroughly vicious, but I desire more particularly to discuss it from a legal standpoint. Speaking as a lawyer, after careful study of the question, it is my opinion that the bill, if passed, will be held unconstitutional for a number of reasons.

This same bill in the last session of Congress was introduced, reported favorably, and passed the House before its opponents knew that such a bill was even pending. As soon as the bill was brought to their attention a hearing was requested before the Senate Committee on Interstate Commerce, and after full argument that honorable committee rejected the measure, and it died.

Before this bill can become a law the commerce clause of the Constitution of the United States must be absolutely sacrificed and disregarded; the famous opinions of John Marshall in *Gibbons v. Ogden* and in *Brown v. Maryland* must be repudiated; the police powers of the several States must be given extraterritorial effect, and the regulation of commerce, which in the plainest Anglo-Saxon language was delegated by the Constitution to the Congress of the United States exclusively, must be transferred in this special instance to the several States.

I have not the time to go into this as thoroughly as I should like, but, briefly speaking, as you know, this bill is introduced to overcome the legal effects of a decision of the Supreme Court of the United States growing out of the so-called Wilson bill, passed August 8, 1890.

The Wilson bill was also passed at the request of the friends of prohibition, to overcome the legal effects of a decision of the Supreme Court. It is worth while to examine these decisions.

In *Leisy v. Hardin* (135 U. S., 100), "the original-package case," the Supreme Court held that no State had the power to control or prohibit the sale of intoxicating liquors transported from one State into another, so long as it remained in original packages.

The language of Chief Justice Fuller in this case has an important bearing on the question of the constitutionality of this proposed bill. "The power vested in Congress," he says, "to regulate commerce with foreign nations and among the several States and with the Indian tribes is the power to prescribe the rule by which that commerce is to be governed, and is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution. It is co-extensive with the subject on which it acts, and can not be stopped at the external boundary of a State, but must enter its interior and must be capable of authorizing the disposition of those articles which it introduces, so that they may become mingled with the common mass of property within the territory entered."

Further on he says: "These decisions rest upon the undoubted right of the States of the Union to control their purely internal affairs, in doing which they exercise powers not surrendered to the National Government; but whenever the law of the State amounts essentially to a regulation of commerce with foreign nations or among the States, as it does when it inhibits, directly or indirectly, the receipt of an imported commodity, or its disposition before it has ceased to become an article of trade between one State and another, or another country and this, it comes in conflict with a power which in this particular has been exclusively vested in the General Government, and is therefore void." Immediately following this decision, in order to overcome its effects, the Wilson bill was introduced and became a law on August 8, 1890.

On May 25, 1891, the Supreme Court for the first time construed this Wilson bill in the case of *Wilkerson v. Rahrer* (140 U. S., 572) on the case as presented, that intoxicating liquors transported into the State of Kansas and there sold, after the passage of this act, were subject to the existing laws of that State as to the selling of such liquors.

After this came the case of *Scott v. Donald* (165 U. S., 58), decided January 18, 1897, which construed the South Carolina dispensary law of January 2, 1895, and held it to be unconstitutional and void as a hindrance to interstate commerce; and held, further, that the dispensary law was not within the scope and operation of the Wilson Act.

When this Wilson bill again came before the Supreme Court of the United States, in the case of *Rhodes v. Iowa* (170 U. S., 415), the court rather dodged the question of its constitutionality, and, in an exhaustive opinion defining its scope and meaning, held that under its provisions liquors transported from one State to another remain under the protection of the interstate-commerce law until they are delivered to the consignee, and that the State law is inoperative to reach them until they are delivered by the common carrier to the person to whom they are consigned.

The present Hepburn bill is designed to overcome this just and equitable interpretation of the Supreme Court, by providing that State liquor laws shall become operative upon a shipment of liquor

immediately upon its "arrival within the boundary of such State or Territory before and after delivery," the addition of the last four words being the only amendment of the existing law. In other words, the mere physical arrival of the liquor on the boundary of any State, even though it be intended for private use, shall make it subject to the operation of State laws, and shall enable any State to empower its officials to confiscate it or destroy it or do as they please with it regardless of the purposes for which it is intended or of the rights of any individual or of the consignor or consignee.

If the Wilson bill had contained the provision of the proposed Hepburn bill—that the police power of the States should attach to articles of commerce before delivery—the Supreme Court would of necessity, in the Rhodes case, have held the Wilson bill to be unconstitutional, for the plain reason that the whole theory of that decision rests upon the basic principles involved in the subject under discussion, and which we now say are settled law, to wit: That the power of Congress over interstate commerce is complete; that spirits and malt liquor are legitimate subjects of interstate commerce; that interstate commerce begins with the shipment and ends with the arrival of the article in the hands of the consignee, and until such arrival interstate commerce continues; and as long as interstate commerce continues, the police powers of the State can not attach, and such police power of the State can attach to interstate-commerce shipments only when the shipment has reached the consignee.

When the shipment reaches the border line of the State, and is yet to be delivered, the goods are still in transitu, are subjects of interstate commerce, and under control of the interstate-commerce clause of the Constitution. If the police power could seize or lay hands on such goods at the border line the police power would be given extra-territorial jurisdiction; would supersede interstate commerce in its control of the shipment, and would destroy the rights of the citizens of the several States to ship articles of commerce and have them delivered to the purchaser in another State.

Mr. PEARRE. Do you say that the Rhodes case so decides, or do you so contend?

Mr. CRAIN. I mean to say that the Rhodes case preserves the commerce clause of the Constitution inviolate, and that it either says or justifies the conclusions and principles of law I have just stated. You can't, under the law, touch an interstate shipment until it reaches the hands of the consignee.

Mr. PEARRE. You contend that Congress has not the power to remedy that?

Mr. CRAIN. I contend that Congress has not the power to change the constitutional law of the land. I contend that the Supreme Court held in the Rhodes case that "arrival" meant, not arrival in the State, as the Wilson act says, but delivery to consignee, because the court did not believe that Congress had the power to do what our prohibition friends want you to do, and what they thought they had done when they got you to pass the Wilson bill.

I may say that this measure in the last Congress, as well as in this, has had some support because its real character was not understood. You have heard a great deal from our very estimable prohibition friends about the abuses and evasions under the existing law, and like the advocates of the bill before the last House, they argue that

this bill merely enables the State to suppress these abuses, and that it in no wise interferes with the right of any individual to import for his own use any liquor he desired. If this were so, the brewers of the United States would not oppose this bill, for they are not defending or asking protection for any such abuses or evasions; but unfortunately it is not so, as the prohibitionists who conceived and foster this bill well know. It has had support because at first blush the bill looks, as its champion in the last Congress argued, like "a proposition simply to give to the States the right of local self-government; the right of a majority in any community to make their own laws and to enforce them." But it does very much more than this.

Its own chief advocate on the floor of the last House said, "this is a proposition to surrender back to the States certain control which was given by the Federal Constitution under the commerce clause to Congress." He certainly stated the fact, even if he did thereby admit the utter unconstitutionality of the act. But it is even much more than this. It does for a State by indirection what the State itself can not do.

The error of such contentions as to the power of Congress is clearly established by the decision of the Supreme Court in the *Rhodes* case and in the *Vance v. Vandercook* case, to which I shall refer presently, and by what is apparently undisputed law from an examination of the authorities.

Thus Justice White, in delivering the opinion in the *Rhodes* case, cites the following from the *Bowman* case (125 U. S., 465):

It might be very convenient and useful in the execution of the policy of prohibition within the State to extend the powers of the State beyond its territorial limits. But such extraterritorial powers can not be assumed upon such an implication. On the contrary, the nature of the case contradicts their existence. For if they belong to one State they belong to all, and can not be exercised severally and independently.

It is enough to say that the power to regulate or forbid the sale of a commodity, after it has been brought into the State, does not carry with it the right and power to prevent its introduction, by transportation, from another State.

The court further says:

It is not gainsaid that the effect of the act of Congress was to deprive the receiver of goods shipped from another State of all power to sell the same in the State of Iowa in violation of its laws, but while it is thus conceded that the act of Congress has allowed the Iowa law to attach to the property when brought into the State before sale, when it otherwise would not have done so until after sale, on the other hand it is contended that the act of Congress in no way provides that the laws of Iowa should apply before the consummation, by delivery, of the interstate-commerce transaction.

To otherwise construe the act of Congress, it is claimed, would cause it to give to the statutes of Iowa extraterritorial operation, and would render the act of Congress repugnant to the Constitution of the United States. It has been settled that the effect of the act of Congress is to allow the statutes of the several States to operate upon packages of imported liquor before sale. (Re *Rahrer*, *Wilkerson v. Rahrer*, 140 U. S., 545 (35:572).)

The decision then goes on with great refinement of reasoning to analyze what the words "arrival in a State" mean, and goes on to show that if it meant at the State borders, it would nullify the whole act; but to uphold the meaning of the word "arrival," which is necessary to support the State law as construed below, forces the conclusion that the act of Congress in question authorized State laws to forbid the bringing into the State at all. This follows from the fact

that its arrival means crossing the line, then the act of crossing into the State would be a violation of the State law, and hence necessarily the operation of the law is to forbid crossing the line and to compel remaining beyond the same. Thus, if the construction of the word "arrival" be that which is claimed for it, it must be held that the State statute attached and operated beyond the State line confessedly before the time when it was intended by the act of Congress it should take effect.

But the subtle signification of words and the niceties of verbal distinction furnish no safe guide for construing the act of Congress. On the contrary, it should be interpreted and enforced by the light of the fundamental rule of carrying out its purpose and object, of affording the remedy which it was intended to create, and of defeating the wrong which it was its purpose to frustrate.

Undoubtedly the purpose of the act was to enable the laws of the several States to control the character of merchandise therein enumerated at an earlier date than would have been otherwise the case, but it is equally unquestionable that the act of Congress manifests no purpose to confer upon the States the power to give their statutes an extraterritorial operation so as to subject persons and property beyond their borders to the restraints of their laws.

If the act of Congress be construed as reaching the contract for interstate shipment made in another State, the necessary effect must be to give to the laws of the several States extraterritorial operation, for, as held in the *Bowman* case, the inevitable consequence of allowing a State law to forbid interstate shipments of merchandise would be to destroy the right to contract beyond the limits of the State for such shipments. If the construction claimed be upheld, it would be in the power of each State to compel every interstate-commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named covered by the inhibitions of a State statute.

The court further says:

Has the law of Iowa any extraterritorial force which does not belong to the law of the State of Illinois? If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter? In view of this necessary operation of the law of Iowa, if it be valid, the language of this court in the case of *Hall v. De Cuir*, 95 U. S., 485, 488 (24:547, 548), is exactly in point. It was said there: "But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position."

Now, this Hepburn bill is introduced to get around this decision. I have cited this case very fully, because, unless the Supreme Court reverses itself or completely shuts its eyes to the real nature of this bill, and the inevitable practical result that it will interfere with interstate commerce, it can not possibly hold it to be constitutional. To do so—

Mr. THOMAS. Before you leave that point that you were on, I would like to ask you a question if it does not interrupt you.

Mr. CRAIN. With a great deal of pleasure.

Mr. THOMAS. Is it your contention that Congress has no constitutional power to prohibit the transportation of intoxicating liquors from one State into another?

Mr. CRAIN. I have not said so, because that question is not germane to the issue. The Supreme Court—

Mr. THOMAS. I ask whether that is your contention?

Mr. CRAIN. No; I am not making that contention now. But I am contending that even if Congress can interfere with interstate commerce in liquor (which I by no means admit), it can not, as this bill

does, delegate to the States the power to do so. I say that the Supreme Court said, in the case of *Rhodes v. Iowa* and in *Vance v. Vandercook*, that the interstate commerce never ceased until the arrival of the goods, i. e., until they reached the hands of the consignee.

This bill proposes to allow the State to seize them before and after delivery. It proposes to stop commerce by preventing delivery. It proposes to enable any State to make prohibition effective by shutting off interstate commerce in liquor. For if the thirsty beer drinker can't get his glass of beer at home and can't import it, he is pretty effectually prohibited.

Mr. PEARRE. May I ask you a question?

Mr. CRAIN. Certainly.

Mr. PEARRE. I do not understand that this is a question of prohibition or antiprohibition.

Mr. CRAIN. In reality it is, but I am not now discussing it from such a standpoint.

Mr. PEARRE. I am especially interested in the legal features.

Mr. CRAIN. I am trying to give them to you.

Mr. PEARRE. Do I understand you to quote any decision of the Supreme Court of the United States to the effect that the pending bill is unconstitutional?

Mr. CRAIN. I say that if you read the case of *Rhodes v. Iowa* (170 U. S.)—my time is getting very limited, but if I had the time to read the whole case to you I would like to do so—that if you read that you will see that the one thought in the mind of Justice White, who wrote the opinion, was that the interstate commerce continued until the goods reached the hands of the consumer.

Mr. PEARRE. I understand that.

Mr. CRAIN. And he also said in that case, in exact words, that the shipment was interstate commerce until it reached the hands of the consignee. Now, if that is the case, and this bill says you can get hold of the goods before they reach the hands of the consignee, is the conclusion not inevitable that the act is unconstitutional?

Mr. PEARRE. Just there, did not the court say that the protection of the interstate-commerce clause of the Constitution continued until the article came into the hands of the consignee—I understand that—but did not the court say that that was so under existing circumstances because Congress had not acted, did it deny the power of Congress to thus affect interstate commerce in liquor?

Mr. CRAIN. The Supreme Court, Mr. Pearre, did not decide in reference to this bill, because this bill had not been introduced; but I say that the Supreme Court said that commerce continued until it got into the hands of the consignee, and you could not touch it.

Mr. PEARRE. Has not the court always indicated in its opinions that Congress had the power to go to the fullest extent that it will undertake to act in this bill if this committee reports it?

Mr. CRAIN. Absolutely not. The Supreme Court has gone the limit very often, but I believe they would stop at this bill. Let me show you why by calling your attention to the latest decision by the Supreme Court, in which the question under discussion was passed upon, which is the case of *Vance v. Vandercook Company*, decided May 9, 1898 (170 U. S., 438), at the same time the *Rhodes* case was decided. This case establishes the following points:

First. That "the respective States have plenary power to regulate the sale of intoxicating liquors within their borders, and the scope and extent of such regulations depend solely on the judgment of the law-making power of the States, provided always, they do not transcend the limits of State authority by invading rights which are secured by the Constitution of the United States, and provided further, that the regulations as adopted do not operate a discrimination against the rights of residents or citizens of other States of the Union."

Second. That "equally well established is the proposition that the right to send liquors from one State into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and hence that a State law which denies such a right, or substantially interferes or hampers the same, is in conflict with the Constitution of the United States."

Third. "That the interstate commerce clause of the Constitution guarantees the right to ship merchandise from one State into another, and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress which allows State authority to attach to the original package before sale, but only after delivery."

Fourth. That "the right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine their contention—then they are void. If they do not, then there is no lawful ground of complaint on the subject."

Fifth. That "the right of the citizen of another State to avail himself of interstate commerce can not be held to be subject to the issuing of a certificate by an officer of the State of South Carolina, without admitting the power of that officer to control the exercise of the right. But the right arises from the Constitution of the United States; it exists wholly independent of the will of either the lawmaking or the executive power of the State; it takes its origin outside of the State of South Carolina and finds its support in the Constitution of the United States. Whether or not it may be exercised depends solely upon the will of the person making the shipment, and can not be in advance controlled or limited by the action of the State in any department of its government."

Now, gentlemen, that is the law. And until the Supreme Court reverses itself this bill can not be constitutional, unless it be true as claimed (1) that it does not in the least interfere with shipments from another State; or (2) that it does not empower any State to interfere with the right of anyone to import liquor for his own use. It assuredly does both these things.

If this act becomes a valid law, there can be absolutely no question that if a citizen of the State of Iowa orders a case of beer from the State of New York, the seller in New York could not ship that case of beer to the citizen of Iowa for the simple reason that immediately upon its arrival within the boundaries of the State of Iowa "before and after delivery" the police power of Iowa attaches and the tem-

perance inquisitors of that State can seize the package, and if the State law permits it, they can destroy it or sit in judgment on it as to whether it shall go to the consignee, or whether it is good for his health, his morals, or his hereafter.

So that, although no State can "forbid shipment to an individual resident for his own use," and although Congress itself also can not do this, yet by this specious legislation it accomplishes indirectly what it can not do directly. I do not believe the courts would uphold this. Congress can not delegate to any State the power not only to regulate commerce and destroy it, but also to regulate individual liberty and to destroy it.

Mr. HENRY. Why is this any more a delegation of power than the Wilson Act of 1890 was?

Mr. CRAIN. For the simple reason that the Wilson Act did not say that commerce had to be stopped. It said that commerce should continue, and commerce did continue until the goods got into the hands of the consignee.

Mr. HENRY. But the act did not say that, did it?

Mr. CRAIN. The Prohibitionists who had it passed did not think it said that, but the Supreme Court said that is what "arrival" meant.

Mr. HENRY. The act said that commerce could continue until the goods got into the hands of the consignee.

Mr. CRAIN. The act said—

Mr. HENRY. Did it not propose simply to give the States absolute freedom in dealing with interstate commerce?

Mr. CRAIN. That was the idea. The Wilson bill said that after the goods reached the State, arrived in the State, that the power of the State should attach.

The Supreme Court said "arrival in any State" meant arrival in the hands of the consignee, and that arrival in the hands of the consignee meant the continuation of the commerce from the time of the purchase and the shipment down to the time of the delivery.

Mr. HENRY. I do not want to interrupt you, but did they not say, in debate, that "arrival in the State" meant arrival in the boundaries of the State and not in the hands of the consignee?

Mr. CRAIN. In debate, very likely; I think so.

Mr. HENRY. Was not that the intention of the act?

Mr. CRAIN. Of the framers of the act, no doubt. If that was the intention, I wish they had clearly expressed it, for then there would never have been any Wilson bill. The Supreme Court would have knocked it into a cocked hat.

Marshall's opinion in *Gibbons v. Ogden*, that "commerce among States" means into and not merely to the boundary of States is still law in this country, I am glad to say. It was precisely because the court held "arrival" to mean delivery that the act was held constitutional; had they held it to mean what, as you rightly say, it was intended to mean, they would have held it to be unconstitutional. The court says so in so many words. Read those decisions and you will find out that from the beginning to the end the courts are not willing, are entirely unwilling, that Congress should give up its control over interstate commerce and delegate it to the States.

Mr. GILLET, of California. May I ask you a question?

Mr. CRAIN. With pleasure.

Mr. GILLETT, of California. The Constitution says that Congress has the power to regulate commerce?

Mr. CRAIN. Yes.

Mr. GILLETT, of California. Do you believe that Congress has the power to pass an act prohibiting interstate commerce on matters that are treated as subjects of legitimate commerce?

Mr. CRAIN. Not at all; and I am glad you ask that, for I want to refer to the recent opinion of Justice Harlan in the so-called Lottery case. (*Champion v. Ames*, 188 U. S., 321.)

At the last hearing before this committee counsel for the temperance people, with much bravado, proclaimed that since the Lottery case decision there could be no doubt of the constitutionality of a bill in Congress prohibiting any commerce in liquors. There is nothing in the opinion of the court warranting any such statement.

The whole intent of the act upheld by this opinion was the suppression of a nuisance and a fraud in interstate commerce traffic, which was being carried on through the transportation of lottery tickets through the means of interstate commerce. The opinion at page 501 cites the case of *Phalen v. Virginia* (8 How., 163), which held "that the suppression of nuisances injurious to the public health or morality is among the most important duties of government, and experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community;" the justice further says that "in other cases we have adjudged that authority given by legislative enactment to carry on a lottery, although based upon a consideration in money, was not protected by the contract clause of the Constitution; this, for the reason that no State may bargain away its power to protect the public morals, nor excuse its failure to perform a public duty by saying that it had agreed, by legislative enactment, not to do so."

The court further says, at page 501:

As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the "widespread pestilence of lotteries" and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another. In legislating upon the subject of the traffic in lottery tickets, as carried on through interstate commerce, Congress only supplemented the action of those States—perhaps all of them—which, for the protection of the public morals, prohibit the drawing of lotteries, as well as the sale or circulation of lottery tickets, within their respective limits. It said, in effect, that it would not permit the declared policy of the States, which sought to protect their people against the mischiefs of the lottery business, to be overthrown or disregarded by the agency of interstate commerce. We would hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, can not be met and crushed by the only power competent to that end.

In concluding his opinion the justice said (p. 504):

The whole subject is too important, and the questions suggested by its consideration are too difficult of solution to justify any attempt to lay down a rule for determining in advance the validity of every statute that may be enacted under the commerce clause. We decide nothing more in the present case than that lottery tickets are subjects of traffic among those who choose to sell or buy them; that the carriage of such tickets by independent carriers from one State to another is therefore interstate commerce; that under its power to

regulate commerce among the several States Congress—subject to the limitations imposed by the Constitution upon the exercise of the powers granted—has plenary authority over such commerce, and may prohibit the carriage of such tickets from State to State; and that legislation to that end and of that character is not inconsistent with any limitation or restriction imposed upon the exercise of the powers granted to Congress.

No sane and decent person will suggest that it is necessary to stop the transportation of beer in order to “guard the morals of the people” or “to prevent widespread pestilence in lotteries,” yet these were the causes which induced the Supreme Court to render its decision in the lottery cases, and to say that under the power of Congress to regulate it had the right to stop the transportation of lottery tickets for the public good.

Before Congress can prohibit, directly or indirectly, the interstate traffic in beer, it must first be established that beer is not a legitimate article of commerce; and if I had the time I should like to quote you some of the adjudications on this point. Even the Supreme Court will not forget that the brewing industry is not on a par with traffic in lottery tickets; that it has been encouraged and fostered by colonial and Congressional legislation since the beginning of the country; that it has had the special commendation of the most eminent statesmen from Alexander Hamilton on down as a legitimate source of official revenue, and that it has contributed as much to the prosperity of the country and to the income of the nation as any other industry.

Mr. POWERS. You have referred to the case of *Gibbons*. Did not Marshall hold in that case that the right to regulate an article of interstate commerce carried with it the right to prohibit an article of interstate commerce?

Mr. CRAIN. No, sir; he did not go that far. *Gibbons* and *Ogden*, and *Brown* and *Maryland*, to the great credit of John Marshall, did not go that far, and, if he needed any monument, they would be a monument to his ability.

Mr. POWERS. Do you not find that he made this statement: That the prohibition of a single article of interstate commerce amounted to a regulation of interstate commerce as a whole?

Mr. CRAIN. I did not catch that.

Mr. POWERS. Do you not find that Marshall said in the *Ogden* case that the prohibition of a single article of commerce might amount to a regulation of interstate commerce?

Mr. CRAIN. That is undoubtedly so.

Mr. POWERS. Under that, may not interstate commerce be regulated by Congress by the prohibition of some one article?

Mr. CRAIN. Certainly not in the sense contended for by the prohibitionists. It might, to this length. If they said that this article that they were going to regulate was a fraud or a menace to public health or morals. I suppose Congress could say you could not carry smallpox patients from one State to another, or yellow-fever patients, or those kinds of things.

Mr. POWERS. Have you ever seen the various bills introduced in the last five or six years providing for the prohibition of interstate commerce in trust-made goods?

Mr. CRAIN. Yes.

Mr. POWERS. What do you think of those bills?

Mr. CRAIN. That is a large question. There is a difference between a regulation of the commerce and a prohibition of commerce. That is

the whole point. Just think of the shrewdness of our prohibition friends. Congress is asked to do something. Not to prohibit; oh, no; merely to regulate—to help the States regulate. That looks innocent enough. Pass the law—

Mr. POWERS. I want your views. I am not expressing my opinion. But would you say a bill, passed by Congress which prohibits interstate commerce in sending goods manufactured by certain corporations, known as the trusts, would be unconstitutional?

Mr. CRAIN. As the laws stand to-day, I would say yes. I would certainly say that Congress can not delegate to any State the power to say that such goods can not cross the State border, which is the case here. Even in the lottery cases the court had to have it argued twice, and then they were a divided court, and were months and months before they could get together on any kind of an opinion at all.

Mr. HENRY. One more question, if you please, although I do not want to interrupt you. I want to get the legal effect of this act. Suppose the act is passed?

Mr. CRAIN. The mere passage of this bill, of course, will not itself affect commerce, except in prohibition or local-option States, or in States having appropriate laws to take advantage of it, and the minute any State passes the necessary law, if it does not already have it, that minute the control of interstate traffic in liquor so far as that State is concerned passes to such State; and as different States will have different laws, one legal effect will be that chaos and inequality must prevail.

The control of interstate commerce was placed in Congress to prevent conflict and effect equality and uniformity. This bill at once destroys this. Rights guaranteed to a citizen of the United States and recognized by one State are denied by another. Interstate commerce in liquor will be lawful under certain restrictions or to a certain extent in one State and under different restrictions and to a different extent in another State. That uniformity and equality which the law of the land guarantees will be destroyed, and those rights, privileges, and immunities as to personal liberty and property guaranteed to the citizens of the United States by the Constitution will be at the mercy of the States.

If Congress can delegate to a State this power to regulate commerce by prohibiting it, of what use is the provision of the Federal Constitution as to interstate commerce? Does not Congress override the Constitution? Does not such action amount to a practical nullification of this provision of the Constitution, or at least an abdication of power under it?

Mr. HENRY. What effect would it have upon the importation of beer into local-option precincts in States where they have not State prohibitory laws?

Mr. CRAIN. If this bill were passed?

Mr. HENRY. Yes.

Mr. CRAIN. It would depend on the State laws, but it is not probable that you could get any beer in there unless our prohibition friends went to sleep or lost their muskets.

Mr. HENRY. I wanted to see how far-reaching it is.

Mr. CRAIN. That is it. Until you study it you do not grasp how tremendously far-reaching—

Mr. BRANTLEY. Let me ask you a legal question. Suppose this bill becomes a law; suppose it should be declared constitutional; what becomes of this interstate power over the commerce of liquor in those States that do not see proper to enact any legislation to carry out the provisions of this law? Does not Congress abdicate its power completely by this bill?

Mr. CRAIN. It surrenders all the power that Congress has in reference to this and it gives to the State the right to act. Of course, if a State does not act—if there is no prohibition or special legislation in the State—then the act has no effect.

Mr. BRANTLEY. Then what becomes of the power? Has not Congress parted with it?

Mr. CRAIN. It has parted with it and given it up, and that is what we say they can not do, and I challenge any lawyer in this country to read every decision from *Gibbons* and *Ogden* down to this case (188 U. S.—the *Lottery* case, the *Ames* case), and you will not find one single expression from all of the judges that have expressed opinions on this question showing that they even dreamed that Congress had a right to give up their power over interstate commerce and to delegate it to the several States.

Chief Justice Marshall, in *Gibbons v. Ogden*, said that “when a State proceeds to regulate commerce with foreign nations or among the several States it is exercising the very power that is granted to Congress, and is doing the very thing which Congress is authorized to do.” (Judson on Taxation, p. 103.)

Is not a sacred duty imposed upon Congress, in its control over interstate commerce, to safeguard the rights of the citizens of the several States in relation to interstate commerce, and not to be a party to any low scheme which seeks to destroy the individual right of any citizen of any State of the Union?

Mr. BRANTLEY. One more question. Suppose this bill passes and it is upheld as a constitutional law, would Congress then have left the power, if it ever had it, to pass a law prohibiting interstate commerce in liquor?

Mr. CRAIN. Congress might repeal the act.

Mr. BRANTLEY. I mean without repealing this act.

Mr. CRAIN. I doubt it.

Just a word more in regard to the insidious simplicity of this bill. As I said a moment ago, its chief fallacy is that it pretends one thing and does another. The measure in the last Congress as well as in this, has had some support, because its real character was not understood. At first blush it looks, as its champion in the last Congress argued, like “a proposition simply to give to the States the right of local self-government, the right of a majority in any community to make their own laws and to enforce them.” But this Hepburn bill does very much more than this. It delegates to the States a power denied them by the Constitution. It enables them to override those sacred rights and privileges guaranteed each citizen by the Constitution and the unwritten law of the land.

The laws of Iowa, let us say, make it unlawful to manufacture or sell beer. This law can not be enforced, say the advocates of this bill, because, forsooth, thirsty individuals import their beer from other States. Now, no State has yet had the temerity to violate the most fundamental principles of free government by making it a crime to

take a drink in the privacy of a man's own home, for "they shall sit every man under his vine and under his fig tree and none shall make them afraid, for the mouth of the Lord of Hosts hath spoken it." In other words, the wary Prohibitionist of Iowa or Kansas says: I have prohibited the manufacturing of beer; I can't prohibit anyone from drinking it, for that would be a violation of a right for which men have battled from the days of Runnymede to Spions Kop.

I can't prevent him from getting it as long as the Congress of the United States controls interstate commerce and permits him to import it consigned to himself, but if I can get the Hepburn bill passed I can seize the goods "before and after delivery," and then, inasmuch as he can't import it, and can't get it in his own State, there will be nothing left for him to do but quit drinking; and presto! Prohibition will prohibit. Surely, the mere statement of this proposition is its sufficient answer.

The very simplicity of the bill conceals its truly extraordinary and far-reaching character. Its passage would be the greatest invasion of the rights of the individual ever perpetrated by any American Congress; it would bring more discord and strife into the peace and harmony of the States, and stir up more bitterness and feeling among the people than any legislation since the fugitive-slave law; it would mean a loss of many millions to the brewing interests of the country; it would line the boundary of every temperance State with sneaks and smugglers; and, inasmuch as whisky can be more easily smuggled than beer, it would do the cause of temperance far more harm than good.

The beer drinkers and the enormous brewing industry of the United States do not believe that Congress is ready to pass any bill which either in purport or effect is a prohibition measure. While the temperance sentiment in this country may in recent years have increased, there can be no question that the prohibition sentiment has decreased. As a political issue prohibition is dead, and as a moral issue it has been abandoned even in the house of its friends. And this fact ought to be a source of much hope to the true lovers of temperance, for it means that if this great drink question is treated with fairness and intelligence instead of with bitterness and bigotry great good can be wrought. The beer industry is here to supply a human want, and it is here to stay. Its friends outnumber its enemies ten to one, and it is entitled to intelligent consideration and to a protection from a mistaken or fanatical minority.

Prohibition has failed because it is foreign to the genius of our free institutions and because it has lacked a sufficiently strong ethical basis to insure the necessary public approval and support. Prohibition does not prohibit; it demoralizes. And I say that in its legal and practical consequences this bill means prohibition by act of Congress wherever and whenever any State desires it. In his recent work on constitutional law Professor Tiedeman devotes a chapter to the constitutionality of prohibition laws, and says that in his opinion as a jurist the courts have not followed the law in upholding the various prohibition laws. I mention this merely to show that even in the courts the cause of prohibition is losing caste, just as it is with the public and even with the reformers.

As you know, the most complete and definitive study of the liquor problem ever made is that now being made by the so-called "Com-

mittee of Fifty," composed of men like President Eliot, Seth Low, Doctor Peabody, Carroll Wright, and others, and their various reports are an unanswerable indictment not only of prohibition, but of modern temperance methods. The best temperance thought of the day has abandoned prohibition as a way out of Egypt. Men like Bishop Potter, Bishop Magee, Bishop Hall, Doctor Rainsford, Lyman Abbott, and a host of other temperance reformers are outspoken enemies of the prohibition propaganda. Temperance is not an emotional nor even a merely moral question. It is an economic problem, calling for calm and intelligent study with some regard for the facts. The truth, as Professor Atwater puts it, is that "temperance reform has been supported by false arguments until its adherents feel that those arguments are almost inseparable from the cause itself. If the strongest weapon against a doctrine is the truth, it is time we revise the doctrine." Perhaps the best expression of the highest modern thought on the subject I can cite is that of Lyman Abbott, as set forth in a recent sermon; and I surely could not phrase a better argument against this bill.

"My objection," he says, "to prohibitory laws is not that they can not be enforced, but that they ought not to be enforced. * * * Not even the local community has a right to determine that men shall not drink alcohol. * * * Has a rural community in Maine, which thinks the saloon is an injury, a right to prohibit the saloon to the people of Bangor or Portland, who entertain a different opinion? If so, on what is that right based? * * * It must be based on the supposed right of the majority to impose their conscience on the minority, to determine for them what is safe and right, to act toward them in loco parentis; and this right of the majority to act in loco parentis toward the minority is fundamentally antagonistic to the essential principle of a democracy."

Aside from all legal objections, this committee will consider well the social and economic viciousness of such a law. There is no demand for such legislation and no real sentiment to sustain it. This kind of interference with individual liberty is foreign to the spirit of our laws and the genius of our civilization.

And this surely is true. The history of civilization, as I read it, sums itself up in the constant struggle of the individual toward greater personal freedom. Liberty has not merely been a shibboleth; it has, consciously or unconsciously, been the very life of the races in their onward struggle. "To pursue one's own good in one's own way," to quote Mr. Mill's famous phrase, means individual liberty; to permit a numerical majority or minority to define the "way" or determine the "good" is tyranny. Perhaps it is a trifle farfetched, but I can not help noting that the ideal of individual freedom has been strongest among the drinking races, and that humanity owes its best heritages to them. The Greek gave us literature and art; the Roman, law, and the hardest drinker of them all, the Teuton, gave us that passion for freedom which has made the Saxon the conqueror of the world. What have the three great races which rejected alcohol—the Arab and the Hindu and the Mongolian—done to equal the work of their drinking rivals?

No law could possibly be more fundamental or far-reaching or more antagonistic to the American ideal of individual rights than is

this bill. The doctrine of the police power has, it is true, been carried very far by judicial interpretation in this country, "but broad and comprehensive as is this power, it certainly can not extend to the individual tastes and habits of the citizen, which are confined entirely to himself." (License case, 5 How., 583.)

In former times sumptuary laws were sometimes passed * * * but the ideas which suggested such laws are now exploded utterly, and no one would seriously attempt to justify them in the present age. The right of every man to do what he will with his own, not interfering with the reciprocal rights of others, is accepted among the fundamentals of our law. (Cooley's Const. Limitations, 385.)

Finally, I wish to reiterate that in considering legislation of this character this committee should be guided by the truth, and not by the sentimental hopes or the bitter fanaticism of those who abhor drink as they abhor the devil. Or, to summarize the whole question in the words of the greatest living authority on the drink question, Mr. Gallus Thomann:

Lawmakers should bear in mind that the use of intoxicants is not a vice, but a perfectly proper enjoyment of great physical, intellectual, and moral benefit to the individual, and of inestimable ethical and material advantage to society; that the abuse of inebriating liquors is a vice, and that, while society is warranted in protecting itself against the effects of this abuse, the method of such protection should not in the least affect the liberty of action of the drinker, but should hold the drunkard responsible. * * * A very small minority drink excessively, and these, as a rule, are the least useful members of the community.

The effect of State interference like this is to deprive millions and tens of millions of useful men of their personal liberties and of that which enhances their well-being, and consequently the well-being of the community, in order to rescue from the throes of vice a small minority of weaklings, who, in the absence of drink, would as naturally succumb to any other one of the many vices and passions against which society finds ample protection in its penal laws. Such laws sacrifice the rights and well-being of the vast majority of moderate drinkers for an infinitesimally small minority of drunkards. * * *

I have no comment to make on many of the statements and representations that have been made during this hearing, but I can not refrain from referring you to high ecclesiastical opinion as to its general value, and I close by reading to you Bishop Potter's opinion of prohibitionists, published in the Outlook, March 11, 1899, as set forth in a letter to Lyman Abbott:

* * * It is the old situation—as old as the religion of Jesus Christ—with the Scribes and Pharisees on the one hand, the Sadduces on the other, and over and against them the Truth.

No more perfect reproduction of the first named has appeared in our day than the Prohibitionists; et id omne genus—arrogant, denunciatory, ignorant, unscrupulous, and untruthful; holding one meager fragment of truth to their eyes, and denying great and fundamental facts in human nature, in their futile and foolish endeavor to remedy the perversion of human instincts by extirpating them. The grotesque hypocrisy of the prohibition system, from Maine to Kansas, is a sufficient commentary upon their theories. Meantime the endeavors of wiser men and women to better the condition—the homes, the domestic life, the recreations—of their less-favored brethren go untouched of these, fit successors of those to whom Jesus said: "Woe unto you, Scribes and Pharisees, hypocrites, for ye bind heavy burdens upon men's shoulders, and grievous to be borne, and ye yourselves will not touch them with the tips of your fingers."

I thank the committee for their attention.

STATEMENT OF MR. ROBERT CRAIN, GENERAL COUNSEL OF THE UNITED STATES BREWERS' ASSOCIATION.

Mr. CRAIN. Mr. Chairman and gentlemen of the committee, it is difficult to add anything to the very full and learned argument which has been made by our friend, Judge Hough, and, as I have had the opportunity to print in the report of the hearings before the committee some of the reasons against the constitutionality of this bill, I will offer only a few suggestions to the committee at this hearing. I had the pleasure of listening to the able argument of Judge Smith, of Iowa, at the last hearing of the committee. In one part of the speech of Judge Smith, in answer to a question by Mr. Gillett, the judge took occasion to say:

You are talking about the constitutionality of this law. We will take care of ourselves if you have not any law that prevents our taking care of ourselves. We are not asking you to take care of us; we are asking you not to interfere with us.

If that is the position of our friends who are asking for the passage of this law, I should take it that the committee would have little difficulty in granting the request as made by Judge Smith. He makes the suggestion that if the committee, and afterwards Congress, will leave himself and his clients and his friends alone, that, at least in the State of Iowa, they will take care of the prohibition question. As I had understood the purpose of this bill, it was, in direct opposition to the statement as made by Judge Smith, that the people of Iowa, according to the views of our friends on the other side, having found it impossible to take care of themselves, had sought the intervention of Congress and asked the aid of Congress in taking care of their laws and the violations of their laws.

Now, gentlemen, it seems to me that it is unimportant in the discussion of this question whether or not the goods shipped from one of the States of the Union into a prohibition State be shipped there either for the purpose of consumption or for the purposes of sale. If the decision of the Supreme Court in the Rhodes case means anything, it means that commerce continues until the goods reach the hands of the purchaser, the consignee. After it has reached the hands of the purchaser it is then for the State law to take hold of those goods, and if those goods are to be sold in violation of any statute of the State, then that violation of statute is the thing that the State must look after. If the goods shipped from New York to Iowa to some man who would desire to purchase them for sale could be seized by the officials of the State of Iowa before they reached the hands of the man who had made the purchase, then the interstate commerce would be destroyed by the officer of the State of Iowa, because the officer of the State of Iowa would be taking hold of those goods while they were still in transitu, and under the decision of the Supreme Court it certainly would be in violation of the Constitution.

There seemed to be some doubt, at this first hearing of this committee, as to whether or not the power of Congress over interstate commerce was absolute; as to how far that power of Congress extended, and as to whether or not there could be some question as to the delegation by Congress to the several States of the regulation of the interstate shipment. We suggested from the very first, when this

bill was before the Senate committee, that there could be no question about that, because since the decision in *Gibbons v. Ogden* it had been acknowledged by all lawyers, as we saw the question, that the power of Congress over interstate commerce was an exclusive and an absolute power. When the opinion in the Northern Securities case was handed down, and you gentlemen of the committee I have no doubt have read it, Mr. Justice Harlan in delivering the opinion of the court, in discussing this question, said—

if, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States; that a sound construction of the Constitution allows to Congress a large discretion "with respect to the means by which the powers it confers are to be carried into execution, which enable that body to perform the high duties assigned to it in the manner most beneficial to the people."

Then he goes on to cite the case of *McCulloch v. Maryland*, and says:

The Government is for all; its powers are delegated by all; it represents all, and acts for all, and is supreme within its sphere of action.

Meaning that Congress had that right.

If we are to concede, and it seems to be settled law by all of the decisions of the Supreme Court, that an interstate shipment continues until it reaches the hands of the consignee, and if we are also to take as settled law that the States can not seize those goods until they reach the hands of the consignee, if you pass this bill and give to the several States the right to take hold of the goods before they get to the hands of the consignee, you delegate to the several States of the Union the power over interstate commerce, and from the decision of *Gibbons v. Ogden* down to this decision in the Northern Securities case, all the decisions are in unison to the effect that that can not be done.

If all other questions are brushed aside, if you brush aside the question which my brother, Judge Hough, has discussed so ably as to whether the sale is made in the State where the purchase is made or whether the sale is to be made in the State where the delivery is made, brushing all those questions aside, unless you are to override the decisions of the Supreme Court that the power of Congress is an absolute and exclusive power, that it can not be delegated, and that the several States can not take hold of these goods until they reach the hands of the consignee, you immediately place in the hands of the States the control over interstate commerce when these goods have reached the borders of the several States. Can any other construction be placed on this bill?

If you pass this bill its vitality, or efficiency, or force becomes effective only by virtue of some law existing or to be passed in the several States of this Union. The State of Iowa may have one law, the State of Kansas may have another law, and the State of Maryland another law, and so on through all the forty-odd States of this Union. Those States may have different laws. They may provide the machinery by which these goods are to be taken hold of when they reach the border line; but those goods when they reach the border line and before delivery are articles of interstate commerce, and any law

which says that the State may interfere with those articles of commerce is unconstitutional, because the Supreme Court has said so in the Rhodes case.

As I said at the last session of these hearings, in the few moments in which I addressed the committee, the only possible way in which the Congress could legislate against the traffic in alcoholic liquors is by the passage of an act of Congress in which the Congress would say that for the benefit of the entire people of this country and for the benefit of the people of the States the traffic in alcoholic liquors ought to be prohibited, and that the Congress would say with regard to liquors, as the Congress said in regard to lottery tickets—exactly as they said of lottery tickets—that for the good of the entire people they would prohibit the traffic in alcoholic liquors. This is not the bill that is pending here. The bill which is pending here is to give the several States the power to do this.

Now, Mr. Chairman and gentlemen, what has been the suggestion made by our friends? They have said that in Iowa—Judge Smith laid great emphasis upon that—there was no law upon the statute book which allowed the State of Iowa to take hold of these goods which were shipped there for purposes of consumption. Who was to pass upon the question as to whether the goods were for sale or whether the goods were for consumption before those goods had been delivered? If the State of Iowa had the right to appoint an officer, if the State of Iowa had the right to select some commissioner to go upon the border line and to take hold of those goods in the express car or at the station of one of the railroad companies, who was to decide as to whether those goods had been shipped to the consignee *bona fide*—for consumption or for purposes of sale?

That was giving to the State the power to say as to these interstate commerce shipments, whether they were for sale or whether they were for purposes of consumption. In this case of *Rhodes v. Iowa* the court made it perfectly plain as to the intention of the Supreme Court on the question of when the interstate commerce ceased, and wherein it commenced.

The sole question presented for consideration is whether the statute of the State of Iowa can be held to apply to the box in question while it was in transit from its point of shipment—Dallas, Ill.—to its delivery to the consignee at the point to which it was consigned; that is to say, whether the law of the State of Iowa can be made to apply to a shipment from the State of Illinois, before the arrival and delivery of the merchandise, without causing the Iowa law to be repugnant to the Constitution of the United States.

They they go on to cite the statute of the State of Iowa, and they come down to this question: Has the law of Iowa any extraterritorial force which does not belong to the State of Illinois? If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter? In view of this necessary operation of the law of Iowa, if it be valid, the language of the court in the case of *Vance v. Vandercook* is exactly in point. It was said there:

We think it might be safely said that State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom does encroach upon the exclusive power of Congress.

What else can it mean? The language is "State legislation which seeks to impose a direct burden upon interstate commerce." Is it not

a burden upon interstate commerce to say that while that interstate commerce is going on, before the interstate commerce has ceased, some officer of any State in this Union can lay hands upon that interstate shipment and pass judgment upon the question as to whether or not that shipment is made in good faith to the purchasee for the purposes of sale or for the purposes of consumption?

Is the officer in the State of Iowa to pass judgment upon the question as to whether or not that shipment is made in good faith to the purchaser for the purposes of sale or for the purposes of consumption? Is the officer in the State of Iowa to pass judgment upon a sale which is made in the State of New York while that interstate-commerce shipment continues and before the interstate-commerce shipment ends; and is he to say—is the State to say—while the interstate commerce is going on whether or not that shipment is made in good faith or whether it is made in bad faith, and what is to become of it?

The only argument offered for this bill is that it is necessary in order to give to the several States of this Union the right to regulate their own internal affairs in the question of liquors. That was the burden of the report which this honorable committee made at the last session of Congress. It was the statement which was made upon the floor of Congress by the advocates of this bill, in which they said: "Allow the several States of this Union to control their own internal affairs in the matter of the liquor traffic."

Now, whether or not those goods are sold to a man in a prohibition State for purposes of resale or for purposes of consumption matters not. It remains a fact that as soon as the goods reach their ultimate destination, then the State law attaches. Is Congress tying the hands of the several States? Is there anything in any act of Congress which takes away from the several States of this Union the right to control their own affairs in the liquor traffic? As soon as those goods get into the hands of the consignee, does not the State law take hold of them, and does not the State law treat those goods in exactly the same way as if those goods had been manufactured in a prohibition State? This is the whole question: The several States are asking Congress, you are told, to allow them to control, so far as the liquor traffic is concerned, their own internal affairs.

Is there any other point involved? And yet the Supreme Court said in the *Rhodes* and the *Vance v. Vandercook* cases that just as soon as those goods get into the hands of the man who has purchased them, then the State law applies and they are to be governed by the law of that State; but the temperance folk deny this.

You may read a temperance paper, you may read the *New Voice*, you may read all the arguments of our learned friends, and they begin with this proposition of enabling the States to control their own internal affairs, and they end with the same thought. If the Supreme Court has said anything it has said in the *Rhodes* case, and it has said in the *Vance v. Vandercook* case, that the laws of the several States are complete in the control over those goods just as soon as they reach the State, and they say that in reaching the State they must reach the hands of the consignee; and I submit that the States can ask for no more.

Mr. SMITH, of Kentucky. Can you answer this question? Why can not Congress say as to the liquor traffic that as soon as any of

these goods reach within the State, across the border of the State, they shall cease to be articles of interstate commerce?

Mr. CRAIN. Because the Constitution prohibits it, and the Supreme Court says so. That is the best reason I know of, on earth.

Mr. SMITH, of Kentucky. I understand.

Mr. CRAIN. Yes, sir; the Supreme Court says that the interstate commerce continues until the delivery reaches the hands of the consignee.

Mr. SMITH, of Kentucky. If Congress has power to regulate that, why can they not regulate it by saying that as soon as whisky or beer goes into one of these States it shall be eliminated from the list of articles subject to interstate commerce?

Mr. CRAIN. That might be so if the Supreme Court had not decided as it has. But the Supreme Court has decided that you can not say that the State may take hold of these goods before they reach the consignee. In other words, the Supreme Court has said that Congress has no right to relinquish or delegate its power over interstate commerce. The Supreme Court says, "You can not do that." It says you can not say "I will give up these goods when they get to the border line."

Mr. SMITH, of Kentucky. Has not Congress the power to say when the control of Congress shall cease?

Mr. CRAIN. Not at all. The Supreme Court has said where interstate commerce ceases and where it begins.

Mr. BRANTLEY. Can there be any such thing as interstate commerce unless the articles pass from one State to another?

Mr. CRAIN. Absolutely not.

Mr. BRANTLEY. Then if this be left to the State where it starts, there is no interstate commerce at all?

Mr. HENRY, of Texas. You and Judge Hough and the other attorneys who have argued this case speak of this law as delegating authority to the States. Now, Chief Justice Fuller, in deciding the Rahrer case, discussing the Wilson Act, uses this language:

Congress did not use terms of permission to the State to act, but simply removed an impediment in the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.

Mr. CRAIN. That is exactly right; and I think that was just as sane a decision as could have been rendered. Here was the fiction: That because these goods were in an original package, that remaining in the original package they could be sold, and the State law could be superseded by reason of the fact that these packages, coming from some other State and being in original packages, they had some peculiar advantages.

Mr. SMITH, of Kentucky. They construed that to be a part of interstate commerce?

Mr. CRAIN. Yes; they said it was an incident of interstate commerce.

Mr. SMITH, of Kentucky. If they could cut off the right of sale—

Mr. CRAIN. They did not cut off the right of sale.

Mr. SMITH, of Kentucky. They said that Congress could.

Mr. CRAIN. Here is what they said: They said there was no rea-

son why these goods coming from some other State and being in the original package should stand on a different footing from goods manufactured in the State and not being in the original package. They took away that fiction which the original-package decision created. And they said to the State, We will not tie your hands because they are in the original package, but we will destroy that and wipe it out, and then when these goods get into the hands of the consignee you deal with them in the same way as though they were not goods that had been sent from the outside of the State at all.

Mr. HENRY, of Texas. You are not arguing that the Wilson law was unconstitutional?

Mr. CRAIN. No, sir; I never argue that the Supreme Court makes a mistake. Sometimes I may think so, but I never argue that way.

Mr. HENRY, of Texas. I have listened to all the arguments carefully, and I can not draw the distinction, really, between the Wilson law and this present law.

Mr. CRAIN. This law?

Mr. HENRY, of Texas. Yes, sir. This is more of a legislative construction of the Wilson Act of 1890—an interpretation of it—than it is new legislation.

Mr. CRAIN. That is very much better than I could have expressed it. That is asking Congress to say that the Supreme Court did not decide exactly as our prohibition friends would have liked the Supreme Court to decide, and they are asking you to instruct the Supreme Court to decide according to their liking.

Mr. HENRY, of Texas. Now, then, are they asking us to go any further than Congress went in 1890? That is a serious question in my mind.

Mr. CRAIN. Of course they are. They are asking you to delegate to the several States the authority to stop interstate commerce.

Mr. HENRY, of Texas. Why "delegate" any more in this case than in the act of 1890?

Mr. CRAIN. Because the Supreme Court said in that case that they could not, under the Wilson bill, get hold of or lay hands on the interstate-commerce shipments before the shipments reached the hands of the consignee. Now, our friends say, "we do not like that decision of the Supreme Court, and we want you to permit us to go out on the border line of the State, and as soon as a freight train or an express car comes along with these interstate shipments we want you to give to the State the power to take hold of these goods before they reach the men who purchased them.

Mr. HENRY, of Texas. That is it exactly.

Mr. CRAIN. Now, that is their—

Mr. HENRY, of Texas. That is their idea?

Mr. CRAIN. Yes. Now, you can not do that, because that is delegating to the several States the right to interfere with interstate commerce, and the Supreme Court said in the Rhodes case, and in the case of *Gibbons v. Ogden*, Chief Justice Marshall said, that the power over interstate commerce was an exclusive power existing in Congress; and they decided in the lottery case that Congress had a right to stop interstate commerce; that Congress had a right to destroy interstate commerce in articles which, in the judgment of Congress, were of such a character as to be destructive of the morals and the health and the good order of the community.

I made a proposition to this committee at the last hearing, which I repeat now, that if our friends will introduce a bill into Congress prohibiting—Congress prohibiting, now, not the State, but Congress prohibiting—traffic in alcoholic liquors, I do not think that this committee will again be worried by the presence of Judge Hough or myself. But that is not the proposition, that the Congress shall do this with interstate commerce, but that you shall go to the—

Mr. DE ARMOND. I do not understand that yourself and Judge Hough would be supporting the bill you refer to?

Mr. CRAIN. If we did, Congress would tell us we are wasting our time.

Congress stated with great boldness that interstate commerce must cease in lottery tickets. They did not have any "if" about that; and the Supreme Court said that lottery tickets were subjects of interstate commerce, and that the Congress had acted all right. Now, if our friends think that liquor and beer are such vicious and poisonous articles, why do they not have the courage to come and ask Congress to deal with them in an open and frank way? But they saw a loophole, they thought. They saw the stars twinkling in the heavens, so far as the Wilson bill was concerned; and by the silent light of the moon they went to work—if I may be permitted to say it—they went to work to hoodwink Congress.

Mr. HENRY, of Texas. You have frequently referred to the power of Congress over interstate commerce as being exclusive.

Mr. CRAIN. That is what these cases say.

Mr. HENRY, of Texas. There are a great many decisions holding that it is concurrent with that of the States.

Mr. CRAIN. I know, but this Northern Securities case says that it is an exclusive power, and it quotes the case of *Gibbons v. Ogden* to substantiate that.

Mr. HENRY, of Texas. That is mere obiter in this case so far as that opinion goes. There have been cases where they held that the power of the States was concurrent with that of Congress, and that wherever Congress by its silence did not act then the States might act.

Mr. CRAIN. And they have said in this case in the plainest language that it is an exclusive power, and Mr. Justice White—and his opinion is concurred in by the other three judges who dissented—gave the same opinion. So that we have the statement by the nine judges of the Supreme Court that the power of interstate commerce is an exclusive power in Congress. But I agree with you that for a long time after several of the cases, and perhaps for thirty years, that question was an open question, as to whether or not it was an exclusive power or whether it was shared by the State. But it is no longer, since these decisions, an open question, in my judgment.

The court said in the case of *Vance v. Vandercook*:

But the right of persons in one State to ship liquors into another State to a resident of that other State for his own use is derived from the Constitution of the United States and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we will hereafter examine this contention—they are void.

Mr. DINWIDDIE. Can I ask you a question?

Mr. CRAIN. Certainly.

Mr. DINWIDDIE. That is *Vance v. Vandercook*?

Mr. CRAIN. Yes, sir.

Mr. DINWIDDIE. What do you think would be the effect on the State of Iowa if this bill should pass and the Iowa law should remain?

Mr. CRAIN. My judgment is that there is no use in talking about that.

Mr. DINWIDDIE. We have been talking about it.

Mr. CRAIN. If the legislature of Iowa was not already in session, taking for granted that the sentiment that I hear here expressed about Kansas and Iowa is the true sentiment, the governor would immediately call the legislature together, and they would pass a law which would say that the officers of Iowa could go upon the border lines of the State and should become inspection officers, as to whether or not these goods were shipped for the purposes of consumption or whether they were shipped for the purposes of sale. And just think of the absurdity of that problem. Here are gentlemen who believe—taking them at their own word, and I never have any desire to question that—that the liquor traffic is an immoral thing; that it is hurtful to the health and good order and morals of society.

Mr. DINWIDDIE. That is what the Supreme Court says.

Mr. CRAIN. No, sir; the Supreme Court have never said so. Now, when a man has that belief, how long does it take him to stretch his conscience to suit the exigencies of the case? Suppose my learned friend here should have a friend of his own way of thinking in the State of Iowa—and I suppose there are a great many of them there—and suppose he should have some friend who is appointed to go upon the platforms of stations and into the express cars to determine as to whether or not these goods were shipped in good faith for the purposes of consumption or for the purposes of sale. I think we may reasonably assume that that man, acting according to his conscience, would say, "I am going to protect my neighbor, and I am going to see that his morals are not destroyed, and I will take care to say that these goods were shipped to that gentleman for the purposes of sale and not for the purposes of consumption."

And so it is exactly—I think I have said it before—like placing a poor, innocent pigeon or broiling chicken into the power or keeping of one of these chicken hawks, and you know what he would do with them. It is the same thing exactly.

With the State of Kansas—and we do not hear anything in this discussion but the State of Kansas and the State of Iowa—

Mr. DINWIDDIE. Oh, yes; there are many others.

Mr. CRAIN. I say that if you pass this law—

Mr. DE ARMOND. I do not quite catch one distinction. In the lottery case it is held that Congress has absolute power over this matter, and also in the Northern Securities case, in the original holding, that the sale in the first place was an incident.

Mr. CRAIN. Yes, sir.

Mr. DE ARMOND. Now, if it is held that Congress has the power to destroy in the one instance and the power to curtail the right of sale, why has not Congress the power to limit it on its entrance?

Mr. CRAIN. I have never suggested that Congress has not the power to decide whether these goods are for the purpose of sale or consumption. I say that the Supreme Court of the United States has decided in the lottery case, and it is now the settled law, that under the power to regulate Congress has the power to destroy; but it is to destroy

when, and to destroy what? To destroy interstate shipments when those shipments are against, are hurtful to the morals, the health, and good order of society. That is the only reason for the exercise of that power. I made the suggestion that if the Congress had the courage to say that so far as malted liquors were concerned they stood upon the same footing as lottery tickets, then a bill introduced into Congress which prohibited the transportation of malted liquors from one State to the other would be the best way to test the good faith of Congress as to the position which it occupied on account of these malted liquors, as to which they have been in partnership with the Government of the United States for the last sixty years.

Mr. DE ARMOND. If Congress decides that these articles are detrimental to public health—

Mr. CRAIN. And morals.

Mr. DE ARMOND. And morals, and so on—

Mr. CRAIN. Yes, sir.

Mr. DE ARMOND (continuing). Why can they not say that they shall not be shipped into the State except on condition that they become subject to the State law?

Mr. CRAIN. Because the Supreme Court has said it can not be. Because the Supreme Court has said that while Congress has absolute and full power over these interstate shipments, that power can not be delegated to the States of the Union.

Mr. DE ARMOND. We do not delegate it. We say it shall terminate the interstate character when it reaches the State line.

Mr. CRAIN. I know, but the Supreme Court said that it terminated when it took place; that the termination never took place until it reached the hands of the consignee.

Mr. DE ARMOND. That was in the absence of Congressional legislation.

Mr. CRAIN. I know; but the Wilson bill would have been knocked into 40 cocked hats by the Supreme Court if it had not been for the loophole which the Supreme Court took advantage of to get out of holding that bill unconstitutional.

Mr. DE ARMOND. I confess that it is an intimation.

Mr. CRAIN. It is an intimation. It is a certainty. The Supreme Court said, "We will not say that the Wilson bill is unconstitutional." Why? You say that the Wilson bill is unconstitutional because it interferes with interstate commerce. The Supreme Court said, "I do not agree with you. It does not interfere with the interstate commerce because the commerce does not cease until it reaches the hands of the consignee." That is what we argued. The Supreme Court said, "You are wrong. The interstate commerce does not cease until it reaches the hands of the consignee."

Mr. DE ARMOND. In the original holding that the sale was a part of the interstate commerce—

Mr. CRAIN. Yes.

Mr. DE ARMOND (continuing). And the regulation of commerce, the cutting of that off, was conceded—

Mr. CRAIN. Yes.

Mr. DE ARMOND (continuing). If that was consistent, why can you not go another step?

Mr. CRAIN. Congress said, "There is no reason why these original packages should give to the articles contained a specious value."

Mr. DE ARMOND. It was not an incident to the interstate commerce?

Mr. CRAIN. Why, of course not.

Mr. SMITH, of Kentucky. Did you state that the decision did not hold that the sale of interstate commerce was only an incident to it, and Congress in cutting off the sale did not cut off the incident?

Mr. CRAIN. It cut off the right of sale on the original package.

Mr. SMITH, of Kentucky. It only cut off the incident, and cut out no part of the rights attaching underneath the interstate-commerce law?

Mr. CRAIN. Now, what did the learned judge say in the case of *Vance v. Vandercook*? This is the way the court dealt with that. He said:

I am altogether unwilling to attribute to Congress an intention to abandon the protection of interstate commerce in articles of food or drink, whether for personal use or for sale.

The CHAIRMAN. That was in the dissenting opinion?

Mr. CRAIN. Yes, sir; that was in the dissenting opinion.

Mr. SMITH, of Kentucky. That language rather imports that Congress can abandon that if they want to?

Mr. CRAIN. I do not think so at all.

The CHAIRMAN. That was the point that the court differed on in that case.

Mr. HENRY, of Texas. This is a dissenting opinion.

Mr. SMITH, of Kentucky. I know it is. That language intimates that.

Mr. CRAIN. Gentlemen, I might extend these remarks, but as I told my friend, Mr. Dinwiddie, on the other side, that I would not exceed a certain time I will stop here.

**BRIEF FILED ON BEHALF OF THE BREWERS OF THE COUNTRY
BY ROBERT CRAIN, GENERAL COUNSEL OF THE UNITED
STATES BREWERS' ASSOCIATION.**

Hearing before the Committee on the Judiciary of the House of Representatives on the bill (H. R. 3159) entitled "A bill to limit the effect of the regulation of commerce between the several States and with foreign countries in certain cases." Fifty-ninth Congress, first session.

This brief is filed at the instance of the United States Brewers' Association on behalf of the brewers of this country, a body that is vitally interested in this measure, not only because of its immediate practical consequences, but because of the dangerous and revolutionary principle involved.

THE HEPBURN-DOLLIVER BILL.

WHAT IT IS.

This bill, popularly known as the Hepburn-Dolliver bill (S. 415, H. R. 3159), is an attempt to amend an existing law known as the Wilson bill, passed August 8, 1890 (26 Stat., 313, ch. 728), by adding ten words to it; but so far-reaching is the legal and practical import of this apparently trifling amendment that if it should

become a law and be upheld by the courts it will, in the judgment of many lawyers, have as far-reaching effect on the organic nature of our State and Federal government as any law placed on the statute books since the civil war. It has now been before Congress for several sessions, and its iniquities and supposed virtues have been pretty well thrashed out, but this brief synopsis of objections is filed in the hope that it may be of some service to the new members of the committee.

The present bill owes its existence to the following facts: Some years ago, when one of those reform waves that seem to move in cycles swept over the country, the reform microbe fastened itself on the so-called liquor curse, and a number of States passed prohibition laws, by virtue of which they undertook to prohibit all importations into the State of liquor from other States. The question of the constitutionality of one of the features of this State prohibitory legislation came up in the case of *Leisy v. Hardin* (135 U. S., 100), where it was held that spirituous liquors are recognized articles of commerce, and that under the interstate-commerce clause of the Constitution a citizen of a prohibition State has the right to import intoxicating liquors from another State, and has the right to sell it in original packages:

Whenever the law of the State amounts essentially to a regulation of commerce with foreign nations or among the States, as it does when it inhibits, directly or indirectly, the receipt of an imported commodity, or its disposition before it has ceased to become an article of trade between one State and another, or another country and this, it comes in conflict with a power which in this particular has been exclusively vested in the General Government, and is therefore void.

Immediately after this decision the Prohibitionists, following a somewhat illogical and contradictory intimation in this opinion, introduced into Congress, and had passed, the Wilson bill, which is the present bill practically verbatim, with the words "for delivery therein," "the boundary of," and "before and after delivery" left out—that is, it provides:

* * * That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory [for delivery therein,] or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival within [the boundary of] such State or Territory [before and after delivery], be subject to the operation and effect of the laws of such State or Territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

This act was sustained on May 25, 1891, by the Supreme Court in the case of *Wilkerson v. Rohrer* (140 U. S., 572) as a valid regulation of interstate commerce by Congress; but when the act again came before the court in *Rhodes v. Iowa* (170 U. S., 415) on a different question, it held that "arrival in the State" meant delivery into the hands of the consignee, and that therefore the power of the State could not attach to a shipment of intoxicating liquors from another State "whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee."

The present bill is designed to overcome this just and equitable interpretation of the Supreme Court by providing that State liquor

laws shall become operative upon a shipment or liquor immediately upon its "arrival within the boundary of such State or Territory before and after delivery." In other words, the mere physical arrival of the liquor on the boundary of any State shall make it subject to the operation of State laws, and shall enable any State to empower its officials to confiscate it or destroy it or do as they please with it regardless of the purposes for which it is intended or of the rights of any individual or of the consignor or consignee.

WHAT THE BILL IS NOT.

Having stated what the bill is, it may be well to state what it is not. There is a sort of insidious simplicity and superficial fairness about it that has a tendency to mislead. Its advocates claim that it is "simply a proposition to give to the States the right of local self-government, the right of a majority in any community to make their own laws and enforce them."

In other words, this amended bill is simply a proposition to restore to the States in this matter full and ample power to enforce their police regulations against the sale of intoxicating liquors; that is the whole question. (Mr. Clayton, Congressional Record, January 27, 1903, p. 1390.)

Now, this is precisely what it does not do. It gives the States something to which under the Constitution, we maintain, they are not entitled and to which, for the reasons to be set forth, they ought not to be entitled.

It is also claimed that the only object of this amended bill is to correct the misinterpretation of the Supreme Court and to make the Wilson bill say what Congress intended it to say. An examination of the Record does not bear this out. On the contrary, it is clear that all its advocates intended was to enable a State to cut out the right of sale in the original package, and not to interfere with the right of shipment. The effort of the Prohibitionists of Iowa to read into this bill an authorization to interfere with a shipment in transit or before it arrived and was delivered to the consignee was clearly an afterthought. The discussion of the Wilson bill, as it appears in the Record of the first session of the Fifty-first Congress (p. 7427), shows that Congress intended it to mean just what the Supreme Court said it does mean.

ARGUMENT.

Our opposition to this measure rests on a number of grounds which may be briefly summarized as follows: (1) There is no necessity for it. The present law, as interpreted, already gives the States all the power they need, or would, in reality, be able to exercise under this bill. (2) It is vicious legislation, likely to have an effect opposite to that intended. It is indirect and unfair, and aims to obtain by subterfuge and chicanery what Congress would never grant if openly asked for. (3) It is a gross interference with the rights of personal liberty. (4) It would invoke serious financial loss and ruination to various important interests that have grown up under the protection of the Constitution and the law of the land. And (5), lastly and conclusively, it would be unconstitutional.

The last of these objections will be considered first in order that the legal aspects of the question may be properly emphasized; and it will be maintained that the bill, if it became a law, would be bad (1) as a delegation of power to the States, (2) as enabling States to pass laws which would have an extraterritorial effect, and (3) as impairing various rights guaranteed to the citizens of the several States by the Constitution itself.

It is apparent that this bill goes to the very root of the question as to the relative rights of the State and Federal Government in regard to interstate commerce and as to the delimitations that must mark the commercial power under the Federal Constitution, and the police power under the State constitutions; and as this question is to-day looming large on the horizon in connection with much other proposed legislation, it deserves to be said that Congress can not afford simply to ignore the legal principles involved and leave it to the Supreme Court to determine questions of constitutionality *vel non*. The advocates of this bill argued at the last session of Congress, "if it is unconstitutional, why oppose it? Why not let the Supreme Court say so?"

Such argument should not have any force with this committee. As Chief Justice Marshall said in *Gibbons v. Ogden*: "The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess * * *" are the real restraints upon which the people rely for protection from bad laws. "They are the restraints on which the people must often rely solely, in all representative government." The duty of Congress is not to make work for the Supreme Court, but to pass constitutional laws. The constitutional question in a narrow as well as a broad sense; the question of your power under the Constitution and of the effect of this bill on the organic law, as well as the questions of advisability and expediency, are therefore properly before you.

The constitutional question in a narrow legal sense is more difficult than it is in the sense of a broad statesmanship. The power to regulate interstate commerce has in these latter days come to be the most important power in the hands of Congress and should be jealously guarded. To forecast the views of the Supreme Court on a bill of this character involves a study of many decisions, and carries one through a maize of perplexing judicial contradictions and non sequiturs; but recent decisions bearing on interstate commerce indicate that the court is fully alive to the importance of preserving to Congress that absolute and exclusive control over it to which it is legally, historically, and economically entitled.

Our present form of government, it need hardly be recalled, owes its existence to the necessity that was felt by the original colonies for some control of commerce by a national body. The Articles of Confederation collapsed because of their failure to take this control away from the constituent members, and as early as 1778 we have New Jersey petitioning the Revolutionary Congress for a meeting "to consider the regulation of commerce." Mr. Witherspoon's famous resolution in the Continental Congress in 1781 dwells on this, and a special committee of that body in 1785 emphasized the need of Congress possessing "the sole and exclusive power" of regulating

trade, not only with the Indians, as the articles provided, but with the several States and all foreign nations as well. The compact between Virginia and Maryland relative to the navigation of the Potomac River and the Chesapeake Bay and the report of the committee thereon led to the call by the Virginia legislature of the convention at Annapolis in 1786 "to take into consideration the trade of the United States, to examine the relative situation in the trade of the States, and to consider how far a uniform system in their commercial relations may be necessary to the common interests and their permanent harmony."

Out of this meeting grew the call signed by John Dickinson, chairman, for a constitutional convention "having for its object the consideration of the trade and commerce of the United States," and out of which grew our present Government. So that, as Daniel Webster said in his great brief in *Gibbons v. Ogden*: "This Government owes its immediate origin to the necessity of regulating commerce between the States," comparatively trifling as commerce then was. It is more and more the one tie that binds our statehood fabric, and this committee may well consider deeply before it passes any law which involves any fundamental departure from established ideas.

To reach any intelligent conclusion as to the probable opinion of the Supreme Court on this bill, it is necessary to analyze the different views that at different times have possessed that august body. The first contentions that came before the court were as to what extent the States had surrendered to Congress all control over commerce between them. Had they concurrent power? Or was that of Congress exclusive? While Congress was silent could the States act? Could Congress authorize the States to act? - Could the police powers of the State affect commerce? Has the Federal Government any police power, etc.?

Down to 1849 the commerce clause had come before the Supreme Court in only five cases. Of these the leading one was *Gibbons v. Ogden* (9 Wh., 1), and if the far-sighted and masterful reasoning of Chief Justice Marshall in his comprehensive opinion in that case had never been departed from, much confusion would have been avoided. The case decided nothing more than that a State regulation of foreign or interstate commerce contrary to a law of Congress is void, but the opinion in its entire scope covers the present controversy. The contention between the famous opposing counsel was as to whether the control of interstate commerce was exclusively in Congress or whether the States had concurrent power. The case having been decided on other grounds this point was not passed upon, but the Chief Justice made it clear that he regarded it as being exclusive.

The opinion in *Brown v. Maryland* (12 Wheat., 415), although deciding on other grounds, again confirms his opinion as to exclusive control. The *Blackbird Creek Marsh* case (12 Pet., 245), which is usually cited to show that Marshall changed his opinion and recognized a concurrent power in the States is easily reconciled, and is probably more in line with the very last decisions of the court than any other. While *Blackbird Creek* was navigable, the right of the State to pass any law affecting the same, in the manner involved in the case, was clearly placed on the ground of a health measure. While in a measure it affected commerce it did not regulate it. "The

repugnancy of the law of Delaware," he says, "to the Constitution is placed entirely on its repugnancy to the power to regulate, * * * a power which has not been so exercised [in this case] as to affect the question." The Delaware law incidentally might under certain contingencies affect commerce within that State on that stream, but it didn't regulate it or affect interstate "intercourse" or trade.

The next case which comes before the Supreme Court was the *Milne* case (11 Pet., 102), which is sometimes cited as recognizing a concurrent power in the States, although it decided nothing more than that as a police measure a State can pass certain quarantine regulations. Indeed, the dissenting opinion of Judge Story in this case ought to set at rest any question as to Marshall's view on the exclusive character of Congress's control over interstate commerce. Story went so far as to hold that the exclusive control of Congress was so absolute that "a State can not make a regulation of commerce to enforce its health laws, because it is a means withdrawn from its authority;" and he adds, "Such is a brief view of the grounds upon which my judgment is that the act of New York is unconstitutional and void. In this opinion I have the consolation to know that I had the entire concurrence, upon the same grounds, of that great constitutional jurist, the late Chief Justice Marshall." Story's conception of the "exclusive power of Congress," it will be observed, excluded the right of a State, even in the interest of health, to enforce any State law if it affected interstate commerce. This conception of "exclusive," with Marshall's indorsement, is worth remembering when you come to study the very recent decisions.

The reaction against the broad construction tendencies of those days, and of Marshall, Story, and others in particular, probably explains the change of view that appears in Taney's day in the license cases which next came before the court. Three cases went up in one record, the one interesting us most being the *Pierce* case (5 How., 504). New Hampshire required any one who wished to sell liquor to obtain a town license. Pierce imported from Massachusetts a barrel of gin and sold it in the original package without a license and was convicted therefor. He claimed that a State law requiring a license for the sale of imported liquor in the original package was void as a regulation of interstate commerce. Taney, C. J., upheld the law on the ground that Congress having passed no law regulating the sale of liquors from other States, this law did not conflict and that the power of the States over commerce in such a case was concurrent. From the "silence" of Congress this deduction was made; in later decisions we shall see that exactly the opposite meaning was given to Congressional silence.

The theory of the *Pierce* case seems to have possessed the Supreme Court in other cases (see *Passenger* cases, 7 How., 283), until, evidently realizing that it proved too much, it was given in *Cooley v. Port Wardens* (12 How., 299) (a case involving the constitutionality of local pilot regulations) a more limited scope, to the effect that the control of commerce under this clause of the Constitution was partly exclusive and partly concurrent. Such subjects of this power "as are in their nature national or admit only of a uniform system or plan of regulation" are under the exclusive control of Congress; and such as have not these universal attributes are concurrent; and

there is again an intimation of the doctrine that "the mere grant of such a power to Congress did not imply a prohibition on the States to exercise the same power; that it is not the mere existence of such a power, but its exercise by Congress which may be incompatible with the exercise of the same power by the States, and that the States may legislate in the absence of Congressional regulation." This dictum is cited because this view had its influence in the *Leisy* and *Bowman* cases, and because some very recent decisions absolutely expose its fallacy.

The case of *Cooley v. Port Wardens*, in which this doctrine appears as argument, really does nothing more in its decision than make a common-sense application of the Marshall interpretation of this clause, as is evident from the following language:

Now, the power to regulate commerce embraces a vast field, containing not only many, but exceedingly various subjects quite unlike in their nature; some imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port, and some, like the subject now in question, as imperatively demanding that diversity which alone can meet the local necessities of navigation; * * * the nature of * * * the regulation of pilots and pilotage * * * is local and not national; it is likely to be the best provided for, not by one system or plan of regulation, but by as many as the legislative discretion of the several States should deem applicable to the local peculiarities of the ports within their limits. * * * The nature of this subject is not such as to require exclusive legislation. * * * There is an absolute necessity from the nature of the subject for different systems of regulation drawn from local knowledge and experience, and conformed to local wants.

The decision then goes on to distinguish between the "nature of this power" and "the nature of the subject to which it extends," and refuses to—

affirm that the nature of the power is in any case something different from the nature of the subject to which, in such case, the power extends, and that the nature of the power necessarily demands, in all cases, exclusive legislation by Congress, while the nature of one of the subjects of that power not only does not require such exclusive legislation, but may be best provided for by many different systems evolved by the States in conformity with the circumstances of the ports within their limits.

It need hardly be added that pilot regulations which act only upon the instrumentalities of commerce—affect it, but do not regulate it—are not on a par with provisions of the character contained in this bill, which act on interstate shipments—on intercourse, trade, commerce.

The reasoning of the *Cooley* case appears to have appealed to the court in a number of subsequent cases, particularly the distinction as to the power being partly exclusive and partly concurrent, although the scope of this classification is steadily narrowed in the later cases; a fair example of which tendency is *Mobile v. Kimball* (102 U. S., 702).

For the regulation of commerce * * * there can be only one system of rules applicable alike to the whole country, and the authority which can act for the whole country can alone adopt such a system.

Now, it is obvious that this bill falls within that class of legislation which requires a uniform system. A State law accomplishing the same ends this bill aims at would not be upheld under the above theory as to the nature of this power for the palpable reason that

while as a law it applies to the whole country, as a "system of rules," as a "regulation" it would apply only as the different States might differently determine; and unless they all at the same time determined alike, it would bring about that very state of irregularity, uncertainty, discord, chaos, and oppression which the commerce clause is supposed to prevent. So that even if one were to concede a concurrent power in the States, this power does not fall within that class. This conclusion need not be dwelt on here, for it will be seen to follow logically from the further definitions of "concurrent" power laid down by subsequent decisions of the Supreme Court to be cited later.

Meanwhile, however, it may be well to note in passing the kind of State laws affecting interstate commerce which have been upheld and it will be noted that while they may affect interstate commerce they do not regulate it; they touch it only locally; they are not aimed at it; they are invariably laws which merely may affect it incidentally; or merely affect the objects or subjects or instrumentalities of commerce as distinguished from commerce itself in the sense of intercourse or trade. In other words, even under the theories of the Taney era, wherever a law was passed by any State for the purpose, or which had the effect, of regulating or deliberately reaching interstate commerce as commerce it has been held void.

This is the theory on which the various bridge, pilot, navigation, wharfage, maritime, ferry, license, tax, etc., cases have been distinguished.

- Wilson v. McNamers*, 102 U. S., 572.
- Gilman v. Philadelphia*, 3 Wall., 713.
- Veazie v. Moor*, 14 How., 568.
- Cardwell v. Bridge Company*, 113 U. S., 205.
- Hamilton v. Vickstery*, 119 U. S., 280.
- Huse v. Glover*, 119 U. S., 543.
- Railway v. Renwick*, 102 U. S., 180.
- The General Smith*, 4 Wh., 438.
- Wiggins Ferry Company*, 107 U. S., 365.
- Woodruff v. Parham*, 8 Wall., 123.

With the decisions in *Brown v. Houston*, 114 U. S., 681, and *Robbins v. Shelby Co. Taxing Dist.*, 120 U. S., 493, a variation on the dictum in the *Cooley* case referred to *supra* and another modification of the concurrent theory, seemed to spring up, to the effect that so long as Congress is silent and does not pass any law to regulate commerce among the several States, it thereby indicates its will, not that the States may act, but that commerce shall be absolutely free and untrammelled in all respects, but that if Congress so wished, or was willing, it might, by affirmative legislation, permit States to affect—not to regulate, but to affect—that freedom by passing laws affecting commerce. This theory appears to have possessed the judicial mind when Justice Matthew came to write the decision in *Bowman v. Chicago R. R.* (125 U. S., 460), and held a law of Iowa which interfered with an interstate shipment of liquor unconstitutional; and is, of course, the theory under which the advocates of the constitutionality of the present bill take shelter. Fortunately the recent decisions have ignored this judicial jugglery.

The decision in *Leisy v. Hardin* (135 U. S., 100), which was the

occasion of this bill, did nothing more than apply the law as laid down in the Bowman case. Chief Justice Fuller apparently interpreted the silence of Congress as indicating the "legislative will" that commerce must be free.

So long as Congress [he says] does not pass any law to regulate * * * or allowing the States to do so, it thereby indicates its will that such commerce shall be free and untrammelled * * * in the absence of Congressional power to do so, the State had no right to interfere by seizure or any other action in prohibition of the importation and sale by the foreign or nonresident importer * * *. The conclusion follows that as the grant of power to regulate commerce among the States so far as one system is required is exclusive, the State can not exercise that power without the assent of Congress.

These two decisions apparently involve a radical departure from the earlier decisions and all sorts of wild conclusions were drawn from them. Without adopting the theory that the States have a concurrent power to act within certain limits regardless of the silence of Congress, these cases seem to hold that Congress by breaking that silence can give the States such power; but they do not say that Congress can give the States any more extensive powers than the earlier decisions conceded them under the so-called "concurrent" theory, and those powers we have just seen were limited to laws which merely affected commerce incidentally. And it is important to keep this in mind because the more recent decisions get back to this safe ground; certainly they do not go as far as the logic of the Bowman and Leisy cases would carry them.

Immediately after the decision of *Leisy v. Hardin* the prohibitionists of Iowa took the suggestion contained in that opinion and had the Wilson bill passed. It seemed to do what the court said Congress might do; but let us see what the courts said and how they have effectually limited the meaning and scope of the Bowman and Leisy decisions.

The constitutionality of the Wilson bill first came up in the case *In re Rahrer* (140 U. S., 545). The bill was attacked on the ground that it delegated to the States the regulation of interstate commerce and if this decision had decided nothing else, it does establish this point, that Congress can not delegate this power. "It does not admit of argument that Congress can neither delegate its own powers nor enlarge those of a State."

It upheld the Wilson bill because it said in effect that it did not affect commerce nor did it give the States any power they did not already possess. In effect, it merely put the law where it was before the Leisy decision.

Congress did not use terms of permission to the State to act, but simply removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no powers to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.

If this act had given the State a power it did not already have, or had given the State authority to give its laws an extraterritorial effect, or if it had regulated commerce instead of merely affecting one of its objects or incidents, it is evident that the court would have held it bad. All it decides is that Congress has the power to divest

goods of their interstate character before sale within the State instead of after sale.

No reason is perceived why if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so. (In re *Rahrer*.)

This decision also clears the way for subsequent rulings by some wise words on the old subject of "concurrent powers."

And here is the limit between the sovereign power of the State and the Federal power. That is to say, that which does not belong to commerce is within the jurisdiction of the police power of the State; and that which does belong to commerce is within the jurisdiction of the United States. (*Wilkinson v. Rahrer*, 140 U. S., 545.)

The Wilson bill again came before the court in *Rhodes v. Iowa* (170 U. S., 412), and the present bill owes its origin to the decision therein. In that case a shipment of intoxicating liquor had been made from another State into Iowa, and the agent of the ultimate railroad carrier in Iowa was proceeded against for an alleged violation of the Iowa law, because, when the merchandise reached its destination in Iowa, he had moved the package from the car in which it came to the freight office, there to await delivery to the consignee. "The contention was," says the summary of this case in the recent case of *American Express Company v. Iowa* (196 U. S., 145)—

That as by the Wilson Act the power of the State operated upon the property the moment it passed the State boundary line, therefore the State of Iowa had the right to forbid the transportation of the merchandise within the State and to punish those carrying it therein. The court declined to express an opinion as to the authority of Congress under its power to regulate commerce to delegate to the States the right to forbid the transportation of merchandise from one State to another.

It avoided this issue by laying down certain distinctions which are material in determining the constitutionality of this present bill. (1) They distinguish between transportation from consignor to consignee, which they say involves interstate commerce in its fundamental aspect, and the right to sell which they say is a mere incident; and (2) they lay down a more definite rule as to the absolute character of the Federal control of commerce.

Rhodes v. Iowa, 170 U. S., 424:

"While it is true that the right to sell free from State interference" interstate-commerce merchandise was held in *Lelsly v. Hardin* to be an essential incident to interstate commerce, it was yet but an incident, as the contract of sale within a State in its nature was usually subject to the control of the legislative authority of the State.

On the other hand, the right to contract for the transportation of merchandise from one State into or across another involved interstate commerce in its fundamental aspect, and imported in its very essence a relation which necessarily must be governed by laws apart from the laws of the several States, since it embraced a contract which must come under the laws of more than one State. The purpose of Congress to submit the incidental power to sell to the dominion of State authority should not, without the clearest implication, be held to imply the purpose of subjecting to State laws a contract which in its very object and nature was not susceptible of such regulation even if the constitutional right to do so existed, as to which no opinion is expressed.

That this distinction was the fundamental determining point is made even clearer by the language of the court in a case decided at the same time and to which further reference will be made later.

Vance v. Vandercook, 170 U. S., 438:

It is also certain that the settled doctrine is that the power to ship merchandise from one State into another carries with it, as an incident, the right in the receiver of goods to sell them in the original packages, any State regulation to the contrary notwithstanding; that is to say, that the goods received by interstate commerce remain under the shelter of the interstate-commerce clause of the Constitution until by a sale in the original package they have been mingled with the general mass of property in the State. This last proposition, however, whilst generically treated, is no longer applicable to intoxicating liquors, since Congress, in the exercise of its lawful authority, has recognized the power of the several States to control the incidental right of sale in the original packages of intoxicating liquors shipped into one State from another, so as to enable the States to prevent the exercise by the receiver of the accessory right of selling intoxicating liquors in original packages, except in conformity to lawful State regulations.

In other words, by virtue of the act of Congress, the receiver of intoxicating liquors in one State sent from another can no longer assert a right to sell in defiance of the State law in the original packages, because Congress has recognized to the contrary. The act of Congress referred to, chapter 728, was approved August 8, 1890, and is entitled "An act to limit the effect of the regulations of commerce between the several States and with foreign countries in certain cases." The scope and effect of this act of Congress have been settled in *In re Rahrer* (140 U. S., 545) and *Rhodes v. Iowa* (ante, 412). In the first of these cases the constitutional power of Congress to pass the enactment in question was upheld, and the purpose of Congress in adopting it was declared to have been to allow State laws to operate on liquor shipments into one State from another, so as to prevent the sale in the original package in violation of State laws.

In the second case the same view was taken of the statute, and although it was decided that the power of the State did not attach to the intoxicating liquors when in course of transit and until receipt and delivery, it was yet reiterated that the obvious and plain meaning of the act of Congress was to allow the State laws to attach to intoxicating liquors received by interstate commerce shipments before sale in the original package, and therefore at such a time as to prevent such sale if made unlawful by the State law.

This distinction between importation and sale, or shipment and sale, is doubtless the point that saved the constitutionality of the Wilson bill. It was a reasonable way out of a difficulty, and the distinction was not a new one. In one of the License cases (*How.*, 504) Justice Woodbury made the same distinction:

It is manifest also, whether as an abstract proposition or practical measure, that a prohibition to import is one thing, while a prohibition to sell without license is another and entirely different. The first would operate upon foreign commerce on the voyage.

The latter affects only the internal business of the State after the foreign importation is completed and on shore. The subject of buying and selling within the State is one as exclusively belonging to the power of the State over its internal trade as that to regulate foreign commerce is with the General Government under the broadest construction of that power. The idea, too, that a prohibition to sell would be tantamount to a prohibition to import does not seem to me either logical or founded in fact, for even under a prohibition to sell a person could import, as he often does, for his own consumption and that of his family and plantation, and, also, a merchant extensively engaged in commerce often does import articles with no view of selling them here, but of storing them for a higher or more suitable market in another State or abroad.

Two results spring from the ground on which this decision is based: One, that the Wilson bill gives the Prohibitionists all they asked for, and that this present bill is not needed, as alleged, to rectify any defect in that bill; and another is that to have held otherwise or to uphold the changes involved in this new bill the courts would have to ignore or change completely the law of con-

tracts and of sales as now established under our system of jurisprudence.

The debates in Congress on the Wilson bill show that all that was asked was relief from the ruling in the *Leisy* case, to the effect that before interstate commerce ceases and State commerce begins property must not only be consigned and delivered, but if the package remains unbroken there must be one sale. This law as now interpreted, therefore, gives the States what they wanted and all they need. The ruling in the *Rhodes* case does not in the least restrict the operation of the law; it merely affirms what was beyond peradventure of doubt its legislative intent. If the Prohibitionists can not now prevent State traffic in liquor or sales thereof, it is not because Federal laws hamper them, but because that moral sanction and support which gives laws their force and vitality is lacking.

What the advocates of this bill and of some four or five other bills now pending really want is to change the common law of contracts and of sales. As Justice White says in *American Express Co. v. Iowa* (196 U. S., 145), the decisions in the *Bowman v. Chicago*, *Leisy v. Hardin*, *Rhodes v. Iowa*, and *Vance v. Vandercook*—

rest upon the broad principle of freedom of commerce between the States, and of the right of a citizen of one State to freely contract to receive merchandise from another State, and of the equal right of the citizen of a State to contract to send merchandise into other States. They rested also upon the obvious want of power of one State to destroy contracts concerning interstate commerce valid in the States where made.

Under the proposed bill articles of commerce lose their interstate character, if the States so determine, upon arrival at the boundary of a State and before and after delivery; and the distinction which Justice White says was the determining principle in those cases is here completely ignored.

Obviously, no sale of liquors could take place under such a law between the citizens of two States if either or both had, say, the present Iowa law. "A sale," says the Supreme Court in *N. & W. R. R. v. Sims* (191 U. S., 446)—

really consists of two separate and distinct elements. First, a contract of sale which is complete when the offer is made and accepted, and second, a delivery of the property which may precede, be accompanied by, or followed by the payment of the price as may have been agreed upon between the parties. The substance of the sale is the agreement to sell and its acceptance.

No contract could exist without delivery, and there could be no delivery. The law of Iowa, the home of the consignee, projects itself under this bill into the State of Illinois, the home of the consignor, and says, "You can contract to sell, but our State law deprives you of the right to deliver, of the right to stoppage in transitu after it gets to our boundary, and of the right to demand from the common carrier that he carry out his contract to deliver to the consignee." That is, Iowa deprives not only its citizen of these rights, but the citizen of another State, to whom the Constitution of the United States guarantees certain inalienable privileges, is also deprived of all these rights which the law of the land recognizes. What effective rights of contracting and shipping has the citizen of Illinois if Iowa can stop his shipment at its boundary?

It is clear that the Wilson bill was not upheld because of any theory of concurrent jurisdiction over interstate commerce in the States;

nor did the "silence of Congress" notion get any further indorsement. On the contrary, these cases settle the law once and for all that the power over interstate and foreign commerce is exclusively in Congress, and that no exception will be made, even of the police legislation of the States. "Police power can not be superior to commercial power." (In *re Rahrer*.)

State laws may affect commerce, as is shown, when the "incidental" right of sale is removed after delivery to consignee, but whenever a State law will in any wise interfere with commerce in the sense of intercourse, or in the sense of transportation from consignor to consignee, or in the sense of freedom of contract, or whenever a uniform rule or plan of regulation is required, then Congress alone can act.

The correctness of this view is confirmed by the last and most exhaustive examinations of the subject. *Lottery Cases*, 188 U. S., 362, and *Northern Securities Co. v. U. S.* (193 U. S., 197), the reasoning of which decisions frankly goes back to that of Marshall. "If, as has always been understood," says Justice Harlan, in the *Northern Securities Case*,

the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States; that a sound construction of the Constitution allows to Congress a large discretion with respect to the means by which the powers it confers are to be carried into execution, which enable that body to perform the high duties assigned to it in the manner most beneficial to the people.

Then he goes on to cite the case of *McCulloch v. Maryland*, and says:

The Government is for all; its powers are delegated by all; it represents all, and acts for all, and is supreme within its sphere of action.

Briefly, then, the Wilson bill was upheld purely because it merely affected one of the incidents of interstate commerce, to wit, the right of sale after delivery. The court expressly says that if the Wilson Act meant what its advocates contended it did mean (and what in common parlance it seems to mean)—that is, that "arrival in a State" means at the boundary—then it would operate extraterritorially. The court prevented its doing this by deciding that "arrival" in a State meant arrival in the hands of the consignee. The present bill says "arrival" shall mean "at the boundary," and "before and after delivery." It says the Wilson bill shall be declared by Congress to mean what the Supreme Court says it doesn't mean, and what the Congress that passed it didn't intend it to mean.

If the amended construction is to be placed on the Wilson bill, then it is clear that it would amount (1) to giving State laws an extraterritorial effect, (2) to a delegation of Federal power to the States, and (3) to depriving a citizen of the right to import liquor for his own use, and that these results follow and that they make the proposed bill unconstitutional is evident from the express words of the Supreme Court.

It might be very convenient and useful in the execution of the policy of prohibition within the State to extend the powers of the State beyond its territorial limits. But such extraterritorial powers can not be assumed upon such an implication. On the contrary, the nature of the case contradicts their exist-

ence. For if they belong to one State they belong to all, and can not be exercised severally and independently.

It is enough to say that the power to regulate or forbid the sale of a commodity after it has been brought into the State does not carry with it the right and power to prevent its introduction by transportation from another State.

* * * * *

It is not gainsaid that the effect of the act of Congress was to deprive the receiver of goods shipped from another State of all power to sell the same in the State of Iowa in violation of its laws, but while it is thus conceded that the act of Congress has allowed the Iowa law to attach to the property when brought into the State before sale, when it otherwise would not have done so until after sale, on the other hand it is contended that the act of Congress in no way provides that the laws of Iowa should apply before the consummation by delivery of the interstate commerce transaction.

To otherwise construe the act of Congress, it is claimed, would cause it to give to the statutes of Iowa extraterritorial operation, and would render the act of Congress repugnant to the Constitution of the United States. It has been settled that the effect of the act of Congress is to allow the statutes of the several States to operate upon packages of imported liquor before sale. (*Wilkerson v. Rohrer*, 140 U. S., 545.)

If the act of Congress be construed as reaching the contract for interstate shipment made in another State, the necessary effect must be to give to the laws of the several States extraterritorial operation, for, as held in the *Bowman* case, the inevitable consequence of allowing a State law to forbid interstate shipments of merchandise would be to destroy the right to contract beyond the limits of the State for such shipments. If the construction claimed be upheld it would be in the power of each State to compel every interstate commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named covered by the inhibitions of a State statute. (*Ibid.*)

The proposed bill certainly will enable States to pass laws having an extraterritorial effect, with the inevitable result that the very strife, discord, and irreconcilable conflict which led to the insertion of the commerce clause would again ensue. Has the law of Iowa any extraterritorial force which does not belong to the law of the State of Illinois? If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter? In view of this necessary operation of the law of Iowa, if it be valid, the language of this court in the case of *Hall v. De Cuir* (95 U. S., 485, 488) is exactly in point. It was there said: "But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position." (*Ib.*)

Not only would the present law be unconstitutional for its extraterritorial effect and because it extends the State police power beyond its constitutional limits, but it would clearly amount to a delegation of its powers by Congress to the States.

It does not admit of argument that Congress can neither delegate its own powers nor enlarge those of a State. (*Rohrer*, 140 U. S., 560.)

The rule is fundamental that the power to make laws can not be delegated. (*Ib.*)

One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws can not be delegated. (*Cooley Const. Law*, p. 117.)

It is true this bill on its face delegates no power; but this bill in itself *ex proprio vigore* does not affect commerce; it only takes effect where a State has or passes the necessary legislation supplementing

it. The minute any State passes the necessary law, if it does not already have it, that minute the control of interstate traffic in liquor so far as that State is concerned passes to such State; and as different States will have different laws, one legal effect will be that chaos and inequality must prevail.

The control of interstate commerce was placed in Congress to prevent conflict and effect equality and uniformity. This bill at once destroys this. Rights guaranteed to a citizen of the United States and recognized by one State are denied by another. Interstate commerce in liquor will be lawful under certain restrictions or to a certain extent in one State and under different restrictions and to a different extent in another State. That uniformity and equality which the law of the land guarantees will be destroyed, and those rights, privileges, and immunities as to personal liberty and property guaranteed to the citizens of the United States by the law of the land will be at the mercy of the States.

If Congress can delegate to a State this power to regulate commerce by prohibiting it, of what use is the provision of the Federal Constitution as to interstate commerce? Does not Congress override the Constitution? Does not such action amount to a practical nullification of this provision of the Constitution, or at least an abdication of power under it?

The Wilson bill was specifically held not to be a delegation of power, because it did none of those things; it merely removed one of the nonessential elements of interstate commerce, to wit, the right of sale free from State interference after delivery in the State. It took away this incident so that the police power could act; it didn't enlarge the police power so that it could reach interstate commerce or intercourse; it merely enabled it to reach or affect one of the subjects of commerce after the contract that constituted commerce had been completed.

It is true the court in the Rhodes case says it expresses no opinion on the right of Congress to delegate to the States this power. But in the light of the decisions can there be much question as to what its opinion on this subject would be?

But regardless of what the Supreme Court might say technically or juridically as to this right, has Congress the moral right to do this? The sovereign people of the sovereign States have placed in the hands of Congress the control of interstate commerce; they have a right to ask it not to abdicate nor delegate this power at the request of any one or more States. Iowa says she can not enforce her public laws against intoxicating liquors unless given the power to stop interstate shipment of liquor at her boundaries. If she asked authority from you to build a Chinese wall around her boundaries so that commerce with other States could be shut out, no one would hesitate as to its unconstitutionality. This law will build such a wall effectively as to liquor. It will stop interstate commerce in this commodity so far as she is concerned. Pass this bill and the liquor trade is at the mercy of the States. Iowa, under her State law, would seize goods at the boundary; Kansas, let us say by way of illustration, would require a certificate or a special package or special label or what not before it could enter; Maine might require drastic inspection; Vermont a special tax; every State a different law, with confusion worse confounded as a result to the interstate shipper. Or suppose every

State passed the present Iowa law; you would then have, as Justice White said, absolute national prohibition—prohibition by delegated act of Congress. This act does not regulate commerce; it delegates to the States the power to regulate and with it the power to destroy.

It is worth noting also that the fact that a State law is in itself valid, as an exercise of the police power does not place it in any more favorable position than any other law when the question arises as to whether it is in conflict with the power of Congress over commerce. Such a doctrine seems to have prevailed for a time (see opinions of Grier, J., and McLean, J., in *License cases*, 5 How., 588) on the principle of *salus populi suprema lex*. The advocates of this bill seem to have the same idea, that there must *ex necessitate* be something about the police power of a State which gives it the right to call upon Congress for assistance if its operations are affected by any silence on the part of that body.

Fortunately, this theory is thoroughly exploded by the recent decisions. The fact that a State law deals with health or the most unquestionable of police measures gives it no greater supremacy nor sanctity than any other law if it regulates or comes in conflict with interstate commerce.

Railroad v. Hosen, 95 U. S., 465.

Minn v. Barber, 136 U. S., 313.

Bowman v. Chicago (supra).

Leisy v. Hardin (supra).

Lottery cases (infra).

The proposed bill in terms subjects goods in any State "for use, consumption, or sale" to the operation of a State law. Under its practical workings it would, or at least could, therefore, effectively prevent importations for personal use. This alone would be a fatal defect. No State can prohibit the importation of liquor for personal use. The *Rhodes* case did not pass on that question, as there was no necessity to do so, but the case of *Vance v. Vandercok* (170 U. S., 438) does; and both cases, passed at the same term of court, taken together, settled this question. The rulings of the court in this case have also other important bearings on the questions here discussed. It held (1) that the proposition is well established—

That the right to send liquors from one State into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and hence that a State law which denies such a right, or substantially interferes or hampers the same, is in conflict with the Constitution of the United States.

(2) That the interstate-commerce clause of the Constitution guarantees the right to ship merchandise from one State into another, and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress which allows State authority to attach to the original package before sale, but only after delivery.

(3) [That] the right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States, and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine their contention—then they are void. If they do not, then there is no lawful ground of complaint on the subject.

(4) [That] the right of the citizen of another State to avail himself of interstate commerce can not be held to be subject to the issuing of a certificate by an officer of the State of South Carolina, without admitting the power of that officer to control the exercise of the right. But the right arises

from the Constitution of the United States; it exists wholly independent of the will of either the lawmaking or the executive power of the State. It takes its origin outside of the State of South Carolina and finds its support in the Constitution of the United States. Whether or not it may be exercised depends solely upon the will of the person making the shipment, and can not be in advance controlled or limited by the action of the State in any department of its government.

In short, if the dispensary law had not been so construed as to preserve the right to make interstate shipments for personal use—a right “derived from the Constitution of the United States”—it is clear the entire act would have been held unconstitutional.

Therefore it follows that this proposed bill must be unconstitutional if it enables any State either to interfere with interstate shipments or with the right to import liquor for personal use. It assuredly does both.

If this act becomes a valid law, there can be absolutely no question that if a citizen of the State of Iowa orders a case of beer from the State of New York the seller in New York could not ship that case of beer to the citizen of Iowa for the simple reason that immediately upon its arrival at the boundaries of the State of Iowa, “before and after delivery,” the police power of Iowa would attach, and the temperance inquisitors of that State could seize the package, and if the State law permitted it they could destroy it, or sit in judgment on it as to whether it should go to the consignee or whether it is good for his health, his morals, or his hereafter.

So that, although no State can “forbid shipment to an individual resident for his own use,” and although Congress itself also can not do this, yet by this specious legislation it accomplishes indirectly what it can not do directly.

As soon as the liquor reaches the consignee, whether for his own use or not, it is subject to the laws of the State. The police problem is then between the consumer and the State. That is where it ought to be. That is where the present law, as interpreted, puts it. And that is where it ought to stay. If a State can not enforce its own laws, if it can not legislate total abstinence into the hearts of its citizens, Congress ought not and can not help it by delegating superior power.

In the several hearings before the committees of the last Congress the question was repeatedly asked by members whether the opponents of this bill contended that Congress had not the constitutional power to prohibit the transportation of intoxicating liquors from one State to another.

So far as this proposed bill is involved, the precise issue raised by that question is purely academic, as our objection to this bill is that it delegates to the States the power to make such prohibition; that it is in fact and in purport nothing more than a prohibition measure in disguise. Indeed, the Supreme Court, in the Lottery cases (188 U. S., 362) so pronounced it, for it says, speaking of the Wilson bill, if under it “all the States had enacted liquor laws prohibiting the sale of intoxicating liquors within their respective limits, then the act would have had the necessary effect to exclude ardent spirits altogether from commerce among the States.”

A sufficient answer, therefore, to this question would be to say that if Congress wishes to try to prohibit interstate shipments of intoxi-

cating liquors it should say so frankly by an appropriate bill, and do it by a general regulation applicable to all the States, and not try to do it by delegating the power to the States. However, as a full answer to this question will expose the viciousness of this present bill it is worth considering.

In the first place Congress would not pass such a bill even if it has the power, and in the second place it does not have the power. Let us consider the latter proposition first.

This idea that Congress might prohibit interstate shipments of liquor received its impetus from the supposed sweeping character of Justice Harlan's opinion in the Lottery cases. Instead of reviewing at length rulings of the courts bearing on this question, it will be sufficient to confine ourselves to a study of this opinion. On close examination it does not go near so far as at first blush appears. One object in the first part of this brief in tracing the drift of the commerce decisions was to show the wavering and uncertain attitude of the courts as to the power of Congress and the power of the States in the premises, and to lead up to the recent pronouncements on the subject. The lottery decision certainly clears the atmosphere. Even Marshall's theory of the exclusive character of the power of Congress over commerce did not go nearly so far as to assume that it was so exclusive that the police power which the Constitution expressly reserved to the States could also be appropriated by Congress.

It is true this decision seems to hold that Congress has a general police power as wide as the States, from which it might be inferred, and by the advocates of this bill has been inferred, that if a State under its police powers can prohibit traffic in liquors, then Congress under this newly discovered police power can also do it. But this decision gives no encouragement to such views—the actual basis of the decision being the same as that in cases like *Reed v. Colorado* (187 U. S., 137), where regulations of Congress for the prevention of disease by transportation were upheld. There is was held, for example, that Congress can regulate, and therefore prohibit the transportation of diseased cattle, because by virtue of their diseased character they have lost their commercial qualities. Trading in diseased meat; in crime; in lottery tickets, is not commerce; it is a perversion of the right of interstate commerce to permit it.

It is a kind of traffic which no one can be entitled to pursue as of right.
* * * It has become offensive to the entire people of the nation.

The whole intent of the act upheld by this opinion was the suppression of a crime which was being carried on through the transportation of lottery tickets by means of interstate commerce. The opinion at page 501 cites the case of *Phalen v. Virginia* (8 How., 163), which held—

that the suppression of nuisances injurious to the public health or morality is among the most important duties of government, and experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community.

The justice further says that—

In other cases we have adjudged that authority given by legislative enactment to carry on a lottery, although based upon a consideration in money, was not protected by the contract clause of the Constitution; this, for the reason that no State may bargain away its power to protect the public morals nor excuse

its failure to perform a public duty by saying that it had agreed, by legislative enactment, not to do so. * * *

As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the "widespread pestilence of lotteries" and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another.

* * * The whole subject is too important and the questions suggested by its consideration are too difficult of solution to justify any attempt to lay down a rule for determining in advance the validity of every statute that may be enacted under the commerce clause. We decide nothing more in the present case than that lottery tickets are subjects of traffic among those who choose to sell or buy them; that the carriage of such tickets by independent carriers from one State to another is therefore interstate commerce; that under its power to regulate commerce among the several States Congress, subject to the limitations imposed by the Constitution upon the exercise of the powers granted, has plenary authority over such commerce and may prohibit the carriage of such tickets from State to State, and that legislation to that end and of that character is not inconsistent with any limitation or restriction imposed upon the exercise of the powers granted to Congress. (Lottery case.)

If, then, Congress could prohibit interstate commerce in beer, it could do so only because beer fell within the category of things "confessedly vicious," "offensive to the entire people of the nation," and "confessedly injurious to the public morals." It must class it with lottery tickets and diseased meats.

The power to regulate is not the power to prohibit, except in the very limited sense set forth in the Lottery case. If there is such a thing as a Federal police power, it is exceedingly limited.

McCullough v. Maryland, 4 Wheaton, 316.

License cases (*supra*).

Trade-mark cases, 100 U. S., 82.

Neither is it within the power of Congress to pronounce absolutely upon the commercial character of any article of commerce. That is a judicial question.

License cases (*supra*).

Hooper v. California, 155 U. S., 648.

Congress has no power to narrow or enlarge the meaning of the term "commerce" itself. It can not, for example, declare that goods in transitu are not subjects of commercial intercourse and then allow the States to regulate their transportation.

Stoutenburgh v. Hennick, 129 U. S., 141.

Cherokee Nation v. Son. K. R. R., 135 U. S., 641.

It could not, for example, declare land a subject of interstate commerce and then proceed to prescribe interstate laws for the various States. It can not make that commerce which is not commerce, and it can not take from legitimate commerce those attributes which make it commerce. The subjects of commerce vary as time and human ingenuity change, but the meaning of the word itself is fixed by the decisions. (*Groves v. Slaughter*, 15 Pet., 449.)

Congress can legislate as to the instrumentalities or qualities of commerce, but it can not prohibit—unless it does it because of the qualities which attach to it. The term commerce has its established legal and judicial denotations and connotations. It not only covers intercourse, but the means of intercourse as well; it not only applies to commodities, but to the incidents and qualities that attach thereto. Meat is a subject of commerce, but not diseased meat—its diseased quality removes its commercial character.

If Congress undertook by "regulation" to prohibit commerce in beer, a recognized legal commodity and subject of commerce, even if such action were within the scope of the Lottery decision, the other provisions of the Constitution guaranteeing to every citizen certain rights would nullify it. Under the guise of regulation a State can not deprive any citizen of the lawful use of his property if it does not injuriously affect or endanger others. Nor under the pretense of exercising the police powers can any State enact laws except for the health of the community.

Calder v. Bull, 3 U. S., 3 Dall., 386.

Fletcher v. Peck, 10 U. S., 6 Cranch, 135.

And, of course, such a prohibition would be such a deprivation of property without due process of law, such an interference with the life, liberty, and property of the citizen, and such an "arbitrary and capricious exercise of power" as is both contrary to the spirit of our laws and institutions, and is indeed expressly forbidden by the letter of them.

Minn. v. Ill., 94 U. S., 124.

Yates v. Milwaukee, 77 U. S., 497.

Cooley Const. Lim., 110, 446.

The decision in the Lottery case apparently goes out of its way to differentiate the liquor traffic from lotteries and that class of commerce. "In *Cowman v. Chicago* (125 U. S., 165) this court held that ardent spirits, distilled liquors, ale, and beer were subjects of exchange and barter and traffic, and were so recognized by the usages of the commercial world, as well as by the laws of Congress and the decisions of the courts." And, indeed, he might have cited a number of decisions to the same effect.

Congress therefore could not pass a law prohibiting interstate commerce in liquor, because they are judicially, legislatively, and commercially recognized as lawful articles of commerce, and are to that extent as much under the protection of the Constitution as are tea, coffee, butter, sugar, or any other lawful commodity.

Even if it be contended that the so-called police power of Congress is so coequal with that of the States—a proposition absurd on its face—it can not be argued that the reasoning which the courts adopted in sustaining State prohibition would also apply to Congressional prohibition. The character of police power under which the State laws were upheld is entirely in the domain of and is by the Constitution expressly reserved to the States. If the Federal Government has any police power it is of a different character, as the Lottery case itself indicates.

It is vital that the independence of the commercial power and of the police power and the delimitations between them, however, sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union the other is essential to the preservation of the autonomy of the States as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality.

U. S. v. E. C. Knight Co., 156 U. S., 13.

U. S. v. Dewitt, 9 Wall., 41.

In fact, this question is sufficiently answered by asking another. Suppose there was no prohibition in any State nor any sentiment

or demand therefor and Congress were to pass a law prohibiting interstate commerce in liquor—would it be constitutional?

This is not the place to review the State and Federal decisions upholding prohibitory laws; but it may be observed in passing that these decisions have been severely criticised by jurists, one of the latest comments being well worth quoting (Tiedman, *State and Federal Control*, p. 554):

This, therefore, is the conclusion reached after a careful consideration of all the constitutional reasons for and against the protection of the liquor trade; the prohibition of the manufacturing and sale of spirituous and intoxicating liquors is unconstitutional, unless it is confined to the prohibition of drinking saloons and the prohibition of the sale of liquor to minors, lunatics, confirmed drunkards, and persons in a state of intoxication. As has already been explained, there is an almost unbroken array of judicial opinions against this position, and there is not any reasonable likelihood that there will be any immediate revolution in the opinion of the courts. But it is the duty of a constitutional jurist to press his views of constitutional law upon the attention of the legal world, even though they place him in opposition to the current of authority.

Congress has no more power than has a State to declare that a nuisance which in fact is no nuisance. That must be determined by due process of law; and by the judicial and not the legislative branch of the Government.

2 Story Eq. Jur., Par. 923.

Murray v. Hoboken, 59 U. S., 280.

Walker v. Sawvint, 92 U. S., 93.

Hudson v. Thorne, 7 Paige, 261.

The nature of the "nuisance" is therefore one of the determining factors. Such a law certainly would not stand unless the manufacture, sale, and transportation of beer is a crime or such a menace to health or such an iniquitous nuisance as to be abhorrent or contrary to the police regulations of all the States. And this it is not. So that in this sense it is the duty of this committee, just as it would be the duty of the courts in considering this bill, to consider also the character of the industry it affects—its place in the community, its nature, size, and importance. This is not the place to review these, but this committee will not forget so far as the beer industry is concerned, that its ancestry is honorable—even patrician. It can trace back its history for many centuries. It was fostered by the colonial government and expressly set forth in Hamilton's famous report as an article that should be encouraged and taxed lower than ardent spirits, because it would "benefit agriculture and open a new and productive source of revenue." From the very beginning of our Government it has contributed largely to our revenues, and since 1862, when the present tax of a dollar a barrel was imposed as a war tax, it has paid, in exact figures, over \$1,000,000,000 to the Treasury of the United States. Under the fostering protection of the Constitution and the laws of Congress it has become in some senses our largest manufacturing industry, over \$800,000,000 of actual capital being invested in its plants. The labor and agricultural and other interests dependent upon the brewing industry would be even more appalling if they were set forth statistically. Millions of acres of land are required to raise the hops, barley, corn, rice, sugar, hay, oats, wheat, stock, etc., used, and millions of men, women, and children directly and indirectly are dependent upon this industry for their livelihood. And of equal

importance is the fact that beer is the nation's drink, or rather it is the nation's food, for

be it understood, especially by those radical temperance people who talk so much and know so little about beer, that nearly, if not quite, one-half of the world's big yield of beer (about 6,725,126,500 gallons per year) is taken with meals, the same as some drink tea and coffee. (W. A. Lawrence, Facts About Beer.)

Another answer to this question, and one that goes also to the vitals of the present bill, is that it is an unconstitutional limitation upon the right of natural and civil liberty. It is one of the inalienable rights of every citizen of this Republic to form business relations, enter into contracts, sell his wares, and his services, free from the dictation of the State, and the only exceptions to this are those covered by the police requirements, and by provisions for a reasonable price, etc., where property becomes "affected," as Chief Justice Hale puts it in his *De Partibus Maris*, "with a public interest and ceases to be *juris privatis* only."

Chicago v. Iowa, 94 U. S., 155.

Slaughterhouse cases, 116 Wall., 36.

Minn. v. People, 94 U. S., 113.

This bill partakes of the nature of sumptuary legislation, and on this aspect alone a volume of objections could be written.

In former times sumptuary laws were sometimes passed, * * * but the ideas which suggested such laws are now exploded utterly, and no one would seriously attempt to justify them in the present age. The right of every man to do what he will with his own, not interfering with the reciprocal rights of others, is accepted among the fundamentals of our law. (Cooley's Const. Lim., 385.)

This kind of interference with individual liberty is foreign to the spirit of our law and the genius of our civilization. "To pursue one's own good in one's own way," to quote John Stuart Mill, "means individual liberty." To permit any legislative body or any numerical majority or minority to define the "way" or to determine the "good" is tyranny. Nothing could be more opposed to the spirit of our laws than prohibition, either direct or indirect, nor could anything be more antagonistic to the American ideal of individual rights than is this bill. The doctrine of the police power has, it is true, been carried very far by judicial interpretation in this country, "but broad and comprehensive as is this power, it certainly can not extend to the individual tastes and habits of the citizen, which are confined entirely to himself." (License case, 5 How., 583.)

Not even the local community has a right to determine that men shall not drink alcohol. * * * Has a rural community in Maine, which thinks the saloon is an injury, a right to prohibit the saloon to the people of Bangor or Portland, who entertain a different opinion? If so, on what is that right based? * * * It must be based on the supposed right of the majority to impose their conscience on the minority, to determine for them what is safe and right, to act toward them in loco parentis; and this right of the majority to act in loco parentis toward the minority is fundamentally antagonistic to the essential principle of a democracy.

The whole conception of this bill is fundamentally opposed to the American notion of personal liberty; but not only that, it creates the very evils it would check. Temperance will never come in by the prohibition route, and Congress certainly ought to bow to the popular sentiment. Temperance is one thing, prohibition another, at least

so Bishop Potter declares. And his letter to Doctor Abbot, in the Outlook of March 11, 1899, is worth quoting:

* * * It is the old situation—as old as the religion of Jesus Christ—with the Scribes and Pharisees on the one hand, the Sadduces on the other, and over and against them the truth.

No more perfect reproduction of the first-named has appeared in our day than the Prohibitionists; et id omne genus—arrogant, denunciatory, ignorant, unscrupulous, and untruthful; holding one meager fragment of truth to their eyes, and denying great and fundamental facts in human nature, in their futile and foolish endeavor to remedy the perversion of human instincts by extirpating them. The grotesque hypocrisy of prohibition system, from Maine to Kansas, is a sufficient commentary upon their theories. Meantime, the endeavor of wiser men and women to better the condition—the homes, the domestic life, the recreations—of their less-favored brethren go untouched of these fit successors of those to whom Jesus said: "Woe unto you, Scribes and Pharisees, hypocrites, for ye bind heavy burdens upon men's shoulders, and grievous to be borne, and ye yourselves will not touch them with the tips of your fingers."

That is why prohibition laws can not be enforced and why Iowa now wants this assistance from Congress to enforce its own laws. And if they can not be enforced, that alone is a good argument why they should not be passed. For if there is one principle that the history of law and legislation teaches with unerring precision, it is, not only the utter futility as a corrective measure of a law whose enactment is not the necessary and unavoidable resultant of the social forces then at play in organized society, but also the great injury inflicted upon law in general by the enactment of laws before their time.

Respectfully submitted.

ROBERT CRAIN,
General Counsel United States Brewers' Association.

**SUPPLEMENTARY BRIEF FILED ON BEHALF OF THE BREWERS
OF THE COUNTRY BY ROBERT CRAIN, GENERAL COUNSEL, THE
UNITED STATES BREWERS' ASSOCIATION.**

Hearing before the Committee on the Judiciary of the House of Representatives on the bill (H. R. 13856) entitled "A bill to prohibit express companies and other common carriers from importing from foreign countries into certain localities of the United States and from transporting from one State into certain localities of another State intoxicating liquors when carried to be delivered with the charge to collect on delivery," and on the bill (H. R. 13655) entitled "A bill to limit the effect of the regulation of commerce between the several States and Territories in certain cases." Fifty-ninth Congress, first session.

This brief is submitted as supplementary to and part of one filed February 21, 1906, before this committee at its hearing on the Hepburn-Dolliver bill (H. R. 3159)—a bill to amend the Wilson bill so as to enable State laws to become operative on shipments of liquor upon arrival at State boundaries both before and after delivery.

H. R. 13655, introduced by Mr. Littlefield, covers the same ground and would have the same effect as the Hepburn-Dolliver bill, and all that has been said about that measure applies equally to it. H. R. 13856, introduced by Mr. Williams, aims to punish express companies for carrying interstate C. O. D. liquor shipments. The same legal

principles and the same objections, legal and economic, underlie all these measures. Both of the bills here considered, like the Hepburn-Dolliver bill, are attempts to overcome or get around the law of the land as laid down by the Supreme Court of the United States in some specific decision to which the prohibitionists object.

The Supreme Court in *American Exp. Co. v. Iowa* (196 U. S., 140), applying long-established and fundamental legal principles, and following the overwhelming authority of the decisions and text writers, held that "intoxicating liquor shipped C. O. D. from one State into another can not be subjected to seizure under the laws of the latter State while in the hands of the express company without infringing the commerce clause of the Federal Constitution." These bills are an attempt to direct the court to reverse itself and to change the organic law.

In the brief heretofore filed the power of Congress in the premises was analyzed in the light of the decisions, and what is said there is entirely applicable here. These bills are bad for the reasons set forth at considerable length in that brief and reference is made to its citations of authorities for the following propositions equally applicable here:

1. The power of Congress to regulate commerce between the States is not a power to destroy. It can not be exercised arbitrarily or so as to result in confusion, discord, and inequality, making one law for one State and a different law for another State. The power to regulate is not the power to prohibit legitimate commerce.

2. This power to regulate commerce can not be delegated to the States.

3. No State can be empowered to pass any law having a direct extraterritorial effect.

4. The making of legitimate contracts, negotiations, intercourse, etc., are themselves "commerce," and Congress can not destroy the right to engage therein.

These bills would have all these legal consequences, and therefore ought not to pass. For the evils which it is hoped they might correct no defense is offered. The brewers of the United States are not in sympathy with "blind tigers," "boot-leggers," and evasions of the law, but they are solicitous that they be not deprived of those fundamental rights which the Constitution and the law of the land guarantees to them, and that they be not deprived of their property and their trade by ill-advised and vindictive legislation.

It is not necessary here to recite again the long line of authorities indicated in my former brief which with steady uniformity limit the power of Congress to interfere with interstate commerce under the guise of regulation, nor to repeat what was said there as to Federal police power. "Commerce" is given a definite legal meaning and the right to trade, to have intercourse, to contract, as well as other pertinent rights are constantly recognized as so fundamental that neither the States nor Congress can destroy them. Even the right "to negotiate" is of this character.

The negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce. (*Caldwell v. N. C.*, 187 U. S., 628.)

The right to contract for the transportation of merchandise from one State

into or across another involves interstate commerce in its fundamental aspects. (*Rhodes v. Iowa*, 170 U. S., 424.)

Commerce consists in intercourse and traffic, including transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities. (*Mobile Co. v. Kimball*, 102 U. S., 691; *Gloucester Ferry Company v. Pennsylvania*, 114 U. S., 196.)

It is true that the court in a recent case says that no opinion is expressed as to the constitutional right and power of Congress to permit any State to interfere with such fundamental or incidental aspects of commerce, as the right of sale, stoppage in transitu, etc., but the implication that Congress has no such power is inevitable. These bills assume that there are no limitations upon the power of Congress to do these things under the guise of regulating commerce. On the contrary, as shown in the brief referred to, these limitations are well established and clearly pertinent to the issues raised here.

How far Congress might go under its own interpretation of the powers delegated to it was the one great question thrashed out at the time of the adoption of the Constitution. The chief objection of a number of the thirteen original States to the Constitution was that it left in this respect too arbitrary a power in Congress; that under the guise of regulating commerce, for instance, Congress could so construe this power as to pass any law which it thought necessary and proper in aid or furtherance of a general power so broad and apparently so absolute. The answer of Hamilton in the *Federalist* (*The Federalist*, No. 78) was that Congress could not by its mere declaration make necessary and proper to the execution of its powers that which in its essence was not necessary and proper; and so suspicious were the States of these arbitrary general powers like the commerce clause, etc., that before the Constitution could be adopted a number of limitations affecting most intimately the liberties of the individual had first to be incorporated in the various amendments. For instance, the regulation of internal commerce was carefully reserved. The police power was reserved. (*N. O. Gas Company v. Louisiana*, 115 U. S., 650.) In other words, the very spirit in which the powers of Congress were delegated to it show that its power to regulate commerce between the States, while plenary is not arbitrary—it is subject to such limitations or restrictions as the Constitution itself in letter and spirit imposes. It can not pass laws which are hostile to the very objects for the accomplishment of which Congress was given its powers. But even if it had the absolute power to regulate this commerce as it pleased, it certainly could not abdicate the power nor delegate it to the States; and even more certainly it could not delegate to a State the power to destroy or to prohibit (*Interstate Commerce Commission v. Brimson*, 154 U. S., 447) any more than it can, for example, pass a law which as an intended regulation of commerce operates directly upon internal commerce and invades the domain of the States. (*Trade-Mark cases*, 100 U. S., 82.)

Nor can it for considerations of expediency or to placate temperance sentiment give the provisions of the Constitution new meanings. If it could, then "there is no power which may not, by this mode of construction, be conferred on the General Government and denied to the States."

Passenger cases, 7 How., 283.

Ex-parte Weber, 18 How., 307.

Now, the abolition of C. O. D. shipments does these very things. It absolutely prohibits, in effect, this class of trade. It abolishes the law of sales to this extent. It puts a new construction on the power of Congress to regulate commerce. It invades every State and says to its citizens, wherever another State has passed a prohibitory law, with the citizens of that State you can not contract according to the laws of the land, the laws of trade, or the laws of sales. The rights of the citizen of the nonprohibiting States must be respected by Congress. This bill delegates to Iowa, for instance, the power to affect and destroy rights belonging to the citizens of Illinois. If Congress can not destroy these rights directly, it can not do so indirectly, and it certainly can not, as these bills do, delegate to the States the power to do so.

The most superficial analysis of the law of sales or of the nature of the contract involved shows that under this bill the laws of any State taking advantage of it would have an extraterritorial effect. They could have no other. For C. O. D. shipments between citizens of the same State can be reached without this act; it is the citizen of the other State they are after. His rights and privileges and immunities are to be taken away from him. And this is unconstitutional.

Passenger cases, 7 How., 492.

Slaughterhouse cases, 16 Wall., 36.

The liberty protected by the Constitution embraces the right to be free in the enjoyment of one's faculties, to be free to use them in lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper. (*Allgeyer v. Louisiana*, 165 U. S., 578.)

To accomplish the ends aimed at by these bills without the aid of Congress, some of the States in the ardor of their prohibition zeal reversed the law of sales to suit their purposes, and held that under a C. O. D. shipment the property is sent at the risk of the seller, and that the sale is not completed until the payment of the price and delivery to the consignee at the point of destination, and that therefore the sale took place in the State of the consignee, and the State law could therefore reach him (118 Iowa, 447). This, of course, is not the law and never has been.

Justice White says, in *American Express Co. v. Iowa* (196 U. S., 142):

Beyond possible question the contract to sell and ship was completed in Illinois (the place of the C. O. D. shipper). The right of the parties to make a contract in Illinois for the sale and purchase of merchandise, and in doing so to fix by an agreement the time when and condition on which the completed title should pass, is beyond question. The shipment from the State of Illinois into the State of Iowa of the merchandise constituted interstate commerce. To sustain, therefore, the ruling of the court below would require us to decide that the law of Iowa operated in another State so as to invalidate a lawful contract as to interstate commerce made in such other State, and, indeed, would require us to go yet further and say that although, under the interstate-commerce clause, a citizen in one State had a right to have merchandise consigned from another State delivered to him in the State to which shipment was made, yet that such right was so illusory that it only obtained in cases where in a legal sense the merchandise contracted for had been delivered to the consignee at the time and place of shipment.

When it is considered that the necessary result of the ruling below was to hold that wherever merchandise shipped from one State to another is not completely delivered to the buyer at the place of shipment, so as to be at his risk

from that moment, the movement of such merchandise is not interstate commerce, it becomes apparent that the principle, if sustained, would operate materially to cripple, if not destroy, that freedom of commerce between the States which it was the greatest purpose of the Constitution to promote. If upheld, the doctrine would deprive a citizen of one State of his right to order merchandise from another State at the risk of the seller as to delivery. It would prevent the citizen of one State from shipping into another unless he assumed the risk; it would subject contracts made by common carriers and valid by the laws of the State where made to the laws of another State, and it would remove from the protection of the interstate-commerce clause all goods on consignment upon any condition as to delivery express or implied. Besides, it would also render the commerce clause of the Constitution inoperative as to all that vast body of transactions by which the products of the country move in the channels of interstate commerce by means of bills of lading to the shipper's order, with drafts for the purchase price attached, and many other transactions essential to the freedom of commerce by which the complete title to merchandise is postponed to the delivery thereof.

And now come the proponents of this bill before this Congress and ask that any State that so desires be authorized to accomplish these very evils which Justice White, speaking for the highest tribunal of this country, so brilliantly portrays. Will Congress say to any State, in the language of the Supreme Court, you may (1) pass laws in your State which will invalidate contracts in another State and will change the laws of sales, of contracts, of carriers, etc., in such other State? (2) You may "cripple, if not destroy, that freedom of commerce between the States which it was the great purpose of the Constitution to promote?" (3) You may change the law of carriers, of contracts, of sales, of bailment, of consignment, so that it varies with the whims and vagaries of the different States? (4) You may "render the commerce clause of the Constitution inoperative" as to all shipments with bill of lading, sight draft attached, and as to "many other transactions essential to the freedom of commerce?" (5) You may pass your various bills and destroy that uniformity of law and dispose with that general rule heretofore required to be applicable to all the States alike, requirements supposed to have been the occasion of this commerce clause and of the Constitution itself?

Congress may answer all these questions in the affirmative and pass these bills and give the States the power to accomplish these disastrous ends, but the Supreme Court will never uphold it.

Should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the Government, it would become the painful duty of this tribunal * * * to say that such an act was not the law of the land. (*McCulloch v. Md.*, 4 Wheat., 316.)

As the Constitution itself does not draw the line (as to the extent and limits of this power), the question is necessarily one for judicial decision. (*License cases*, 5 How., 574.)

The extraterritorial effect which this bill would give to State laws would alone invalidate them. For, mark you, it is not this C. O. D. bill which in reality changes the law of sales or the rights of any citizen. That law stays as it is and his rights are unaffected until the State speaks. As soon as it does speak it at once reaches beyond its borders, and puts into operation powers lodged only with Congress.

In the recent case of *Kehrer v. Stewart* (197 U. S., 60), Nelson Morris & Co., of Chicago, had a sales agent in Atlanta, Ga., in which

State there was a general license tax of \$200 on all agents of packing houses doing business therein. The court said that as to all goods sold in Chicago and delivered to a common carrier for delivery to such agent for distribution in Georgia such tax was clearly an illegal interference with interstate commerce. To that extent the State law had an extraterritorial effect and was bad. The body corporate as a citizen of Illinois had rights, privileges, and immunities—one of which was to make this contract of sale—which the State of Georgia had to respect. And these same rights, privileges, and immunities are so fundamental and inherent in the very origin, nature, and purpose of our Government that even Congress can not abridge nor destroy them.

The rights of the citizen in the nonprohibition States are the forgotten factors here and they are the controlling factors. Congress can not deprive him of his constitutional rights. It can not add to nor subtract from the police power of any State so as to reach him. He has certain rights as a citizen of the State and also as a citizen of the United States; and among these, as Justice Field says, are the right to work and trade and ship and negotiate and enter into all proper contracts and have them carried out. All the arguments in support of these bills rest on a false premise and that is that liquor is an illegitimate article of commerce. The fact that certain States or counties or villages so treat it doesn't make it such in States that regard it otherwise, and the rights of the citizen in the State not so treating it must be respected by Congress, unless Congress itself is ready to class it with lottery tickets and diseased meats and shut it out from commerce entirely—if it can.

This limitation on the power of Congress is fairly well illustrated in the late case of *Re Huff* (197 U. S., 448), in which one of these acts passed in 1897 at the instance of our prohibition friends was held unconstitutional. By this act it was made a Federal penal offense for anyone in any way to furnish any Indian liquor "to whom allotment of land has been made," etc. Although the various allotment acts provide that "every Indian to whom allotment shall have been made * * * is declared to be a citizen of the United States and is entitled to all the rights, privileges, and immunities of such citizen" * * * there was nevertheless, so far as title went, a modified form of wardship. Because the States could not stop these thirsty redskins from violating their State laws, they took advantage of this technicality and had this act of 1897 passed in the hope that the Federal Government could do what the State government couldn't. The Supreme Court says Congress has no such power. And in this opinion the court also says a few things that ought to clear up some of the confusion that seemed to exist in the minds of a number of gentlemen at a recent hearing before the Ways and Means Committee on the bill to compel officers of the Federal Government to testify in prohibition districts as to Federal licenses issued, etc.:

In this Republic [says Justice Brewer] there is a dual system of government, national and State; each within its own domain is supreme. * * * The general police power is reserved to the States, subject, however, to the limitation that in its exercise the State may not trespass upon the rights and powers vested in the General Government. The regulation of the sale of intoxicating liquor is one of the most common and significant exercise of the police power. And as far as it is an exercise of the police power it is within the domain of State jurisdiction. It is true that the National Government exacts licenses as

a condition of the sale of intoxicating liquor, but that is solely for the purposes of revenue and is no attempted exercise of the police power. * * * Now, this act of 1897 is not a revenue statute, but plainly a police regulation. It will not be doubted that an act of Congress attempting as a police regulation to punish the sale of liquor by one of the citizens of a State to another within the territorial limits of that State would be an invasion of the State's jurisdiction and could not be sustained. * * * There is in these police matters no such thing as a divided sovereignty.

From which it follows that if Congress can not subtract from the police power of the State, neither can it add thereto; neither can it arrogate to itself a superior police power and override the State.

The extraterritorial features of these bills and the legal consequences arising therefrom are also covered in the *Rahrer* case (140 U. S., 545), where the court, in upholding the *Wilson* bill, says:

If the act of Congress be construed as reaching the contract for interstate shipment made in another State, the necessary effect must be to give to the laws of the several States extraterritorial operation, for, as held in the *Bowman* case, the inevitable consequence of allowing a State law to forbid interstate shipments of merchandise would be to destroy the right to contract beyond the limits of the State for such shipments. If the construction claimed be upheld, it would be in the power of each State to compel every interstate-commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named covered by the inhibitions of a State statute.

These bills are also bad for depriving the individual of certain rights of personal liberty, as well as the freedom to trade and to contract, guaranteed to him by the Constitution. For in their final analysis these measures are not aimed at the man who violates the State law so much as at the man who violates the teetotaler's ideal; in other words, they want to get at the citizen who imports for his own use. They want to make it difficult for him to get his liquor by stopping his right to buy it C. O. D. and see what he is getting before he gives up his money; by having the right to halt and inspect, and if in doubt, confiscate his importation at the State boundary; by putting him to all the trouble and harassment and notoriety they can, and by putting him under the odium of suspicion every time he gets any shipment. None of these bills ask for this openly because the Supreme Court in *Vance v. Vandercook* and elsewhere has announced that such a law would be unconstitutional; they therefore try to get the same results by these indirect ways. In no single aspect are they regulative of commerce—they are prohibitive in intent, in theory, and effect.

Respectfully submitted.

ROBERT CRAIN,
General Counsel United States Brewers' Association.

AFTER RECESS.

(The continuation of the statement of Mr. Robert Crain was temporarily deferred.)

**STATEMENT OF CHARLES JOHN HEXAMER, ESQ., OF
PHILADELPHIA.**

Mr. HEXAMER. Mr. Chairman and gentlemen of the committee, I shall be very brief, because I have thrashed out all I had to say at the hearing of the Committee on the Judiciary in 1904.

I am the president of the National German-American Alliance, which, I may say, is a patriotic American association composed of people of German birth or extraction. We have one and a half million members, and they are all taxpayers and all citizens of the United States.

Mr. Chairman, our opposition to this bill is simply this: That we are opposed to prohibition in any way, shape, or form, because we honestly and sincerely believe that prohibition causes intemperance. We are a temperate people and believe that any temperance legislation is mischievous. We believe that we should have in you, our national legislators, a strong bulwark against all encroachments, against all shrieks of fanatics. Let them, if they like, have in their different sections local option if the majority so desire. Let them, if they like, have their prohibition in certain States if the majority wish so. But we say to you, do not crush out an intelligent minority.

Mr. Chairman and gentlemen of the committee, I shall not occupy your time, but I have brought with me here a number of gentlemen, new faces, members of our alliance, and I will simply state that we are opposed to this measure because it is the entering wedge of the Prohibitionists. We believe that the passing of this measure would cause endless strife and litigation and be the cause of blackmail and political corruption and would create hypocrites, sycophants, sneaks, and smugglers.

And let me state, Mr. Chairman, and I say this simply for information and from no other cause—I deplore it deeply, because I think that a matter such as prohibition should not be a matter of politics—but I have to say to you in all fairness that we have in the United States over 700 German newspapers, and there is not a single one that I know of that is not against this measure, and the members of our alliance are stretched all over the United States. We have representatives in every State, and they are intently watching this matter; and not only the million and half people of our alliance, but millions more who feel with them and think as they do are intently watching the Congressmen of every district, and I say to you, not as a threat, for I say that I deeply deplore it personally, but I say to you that those men are members of the Democratic party and the Republican party, and they will stand together as one man, and they will do everything in their power to crush every Congressman and to prevent his return, who will vote for this bill, ultimately. I do not say this as a threat. I say it because I, as an American citizen, American born, deeply deplore it. But I think it would be an exceedingly unwise measure for even this committee to allow this measure to get before Congress.

Mr. Chairman, the notice for this meeting was exceedingly short. I have my pocket filled with letters from different centers that clamor to be heard. I have brought with me the few men whose presence I possibly could secure on such short notice, representative German-American men, who have held high public positions in our public life and in business and in commerce, who will address you, if you will kindly permit them to do so. I hope, however, gentlemen, that you will allow the members from other sections, who are clamoring to be heard, to also receive a chance to appear before you. I would most respectfully beg that you allow another hearing, say in about a month

from now, when we can get them together. They will have much to say to you that will be of interest, and, I think, will clear and clarify matters and make them more limpid.

Mr. TIRRELL. Is that society opposed to local option?

Mr. HEXAMER. No, sir—we are, too; but we are opposed to prohibition in any way, shape, or form.

Mr. TIRRELL. Another question. Are you opposed to any restriction or regulation of the liquor traffic by State or national enactment?

Mr. HEXAMER. We believe that every State has sufficient police power, or should have, to take care of itself. We are opposed to having the National Legislature interfere with State regulations of that kind. We believe that the State that has become so atrophied that it has to call upon the National Legislature to enforce its own police control is in a deplorable condition.

Mr. TIRRELL. If local option, to which you say you are not opposed—

Mr. HEXAMER. We are opposed to local option, too. We are opposed to restriction of any sort. We believe that any prohibition measure will only make things worse. In other words, take a man who would not think of taking a drink, and the moment you forbid that man to take a drink he will say: "Now, I will have it, by all means." Forbidden fruit is always sweet. Go into your temperance resorts and see what the conditions are. I have been there. I have gone down into the basements of the hotels, at places at Asbury Park, and I have never seen such scenes of debauchery and drunkenness as I have there among the young people. Why, those young fellows would not think of taking a drink ordinarily, but they know that they ought not to have it in that place and they go down there because they know it is prohibited, and it tastes sweet and good to them.

We believe that any restriction of that kind will certainly make matters worse. I can assure you, Mr. Chairman and gentlemen, that there is not a single person who has come with us to-day who, if he thought he could blot out drunkenness by self-abnegation or that he could blot it out by promising to-day not to touch a drop of liquor in his life—if by doing that he could crush out the horrible curse of drunkenness, I say there is not one man here to-day who would not willingly and cheerfully at once promise not to touch a drop. These people are temperance men, but it is because they know and because history teaches us what horrible examples and what a horrible curse prohibition has been to the United States that we oppose it.

I read to you in the previous hearing the statements of men who were entirely unbiased in every way, such as Seth Low, Charles W. Eliot, and James C. Carter, who have said:

"There have been concomitant evils of prohibitory legislation. The efforts to enforce it during forty years past have had some unlooked-for results on public respect for courts, judicial procedure, oaths, and law in general, and for officers of the law, legislators, and public servants. The public have seen law defied, a whole generation of habitual lawbreakers schooled in evasion and shamelessness, courts ineffective through fluctuations of policy, delays, perjuries, negligences, and other miscarriages of justice, officers of the law double-faced and mercenary, legislators timid and insincere, candidates for office hypocritical and truckling, and officeholders unfaithful to pledges and to reasonable public expectation."

Such are the ideas of Charles W. Eliot, Seth Low, and James C. Carter in their introduction to a record of their investigation of the liquor problem. We do not care for the beer; we do not care for the wine. I myself once in a while take a drink with friends at the table, but at my own house I do not use liquor. I drink mineral water. We are here because history has proved that prohibition does not cause true temperance; that it is a curse, and that where a man would publicly formerly drink a light beverage—an innocuous beverage that can not harm, like beer—they will afterwards smuggle whisky into their homes. And what is still worse, women, who are too timid to go and buy the whisky, will smuggle into their homes patent medicines that are stronger than the whisky sold in commerce.

I will now introduce, with your kind permission, Mr. Adolf Lankering, former mayor of Hoboken, who will address you.

STATEMENT OF ADOLF LANKERING, ESQ., OF HOBOKEN, N. J.

Mr. LANKERING. Mr. Chairman and members of the committee, I shall be very brief, and in order to do so I would like to read my sentiments and the sentiments of my constituents:

With your kind permission I appear before you to express my views on bill H. R. 4072, commonly known as the Hepburn-Dolliver bill, which has for its purpose to aid State authorities in the prohibition of traffic in intoxicating liquors.

It is not my intention to dissect the proposed measure or pass upon its general form or speak upon its bearing from a legal standpoint.

I have come here to express the sentiment of thousands of people of the State of New Jersey and thousands of more in sympathy with them residing in other States of the Union.

My live interest in the affairs of our Federal, State, and local government and, finally, my experience as the executive of the city of Hoboken during the last four years place me in a position to pass upon legislation of a character like that referred to and now in your hands for consideration.

I am in this country over thirty years, have been employed in the earlier part of this period of my life as a traveling salesman, and have had the opportunity to learn the conditions in States where efforts have been made to establish temperance through the enforcement of State and local laws prohibiting the sale and use of liquors in any form for other than medical or manufacturing purposes.

Have the people responsible for these laws been successful? No; and they never will be, because every law must be inefficient when there is not public sentiment favoring the enforcement and when officials, elected by the people for the purpose of enforcing laws regulating the local government, are naturally guided by the sentiment prevailing among their constituents.

Have they raised the moral standard of the population in the States or local districts affected? No; on the contrary, they have in my eyes lowered the moral standard when they induce men, otherwise respectable and of good character, to apply to a physician and obtain under false representation a prescription for spirits frumenti, with perhaps some other harmless stimulant mixed, in order to meet

legal requirements and their desire for some liquor, when they induce men to invent all kinds of schemes to obtain the liquid, which schemes are in contradiction to their principles and an insult to their manhood and a shame to self-respect.

Still these men feel that it is their sacred right and privilege to select their own food and their refreshments. They feel that, as citizens and men of age, the Government has no right to appoint guardians over them, vested with the authority to dictate what they should eat and drink.

It would take too long to picture the disgraceful scenes which I have witnessed in my travels through the prohibition States, and oftentimes I have asked myself, When will the time come when such disgraceful conditions will be made impossible to exist?

Gentlemen, temperance can only be established by education, by upbuilding all that makes a man, nursing the root of self-respect—love and pride in personal accomplishments.

The American people have become a great race and have taken the lead in the civilized world, and with pride may any man proclaim his citizenship as an American wherever he goes. He must, however, remain free, self-dependent, and without shackles. He should be held responsible for his own deeds, for his own conduct, and in his social life he must display the qualities of an American gentleman.

The occasional drink of a glass of wine, of a glass of beer, or a drink of whisky does not interfere with his manly principles and the unwritten laws of good behavior; but the dictations of temperance fanatics, and laws dictated by intolerance and hypocrisy do.

Where in the civilized world do you find men of real learning, men of science, advocates of progress and the advancement of modern and broad ideas who would indorse the means employed by advocates of temperance in our prohibition States? Name one, and upon investigation I will trace his motives to selfishness or idiocy. With them it is either business or fanatical narrow-mindedness. If this Government should ever fall into their hands, the blessing of the Almighty could not save us from destruction, morally and commercially.

To my appealing words some one may say that the efforts of the temperance advocates are not directed against the gentlemen who know how to drink and keep supplies in their comfortable homes for the accommodation of themselves and their families and friends, but against the unfortunate in less favorable circumstances, the workmen and laboring classes in general.

Such argument would remind me of an answer which I received some years ago in a very busy little city in one of the New England States when I put the question why they had no licensed public places where the factory employees could get a glass of beer or wine.

I was told that the manufacturers under the existing regulations at that time were successful in preventing the granting of any liquor license, because the men would be in position to work for less wages if they were not given the opportunity to spend any money for beer or other beverages, and, besides, they said, according to the ideas of the employers it was not well to invite the habit for the workmen to come together in public places during their leisure time to "talk matters over." They would be better off home. How kind, I thought.

Times have changed; the American laborer has made rapid advances and has become accustomed to think for himself and to realize what is best for himself. The American wage-earner, as a class, is moderate in the use of intoxicants. He has benefited as well by the general advancement of this country and the elevation of our educational standard. He can well be trusted under a liberal government.

The city mayors of this country know this, and I say, with others who have benefited by the experience as executives of municipalities: "The least governed people are the best people." Whenever and wherever extreme measures are applied to restrict or prohibit the sale and consumption of liquors hypocrisy and corruption are the result.

Permit me to advise, with Rev. W. Oeser, of Philadelphia, "Keep your hands off and do not report this bill for passage."

Mr. HEXAMER. With your kind permission, Mr. Chairman, I will next call Col. E. C. Stahl, of Trenton, N. J., who is the past commander of the Grand Army of the Republic of the State of New Jersey.

STATEMENT OF COL. E. C. STAHL, ESQ., OF TRENTON, N. J.

Mr. STAHL. Mr. Chairman and gentlemen of the committee, the address of the gentleman who opened the argument to-day, Mr. Dinwiddie, has taught me one thing, and that is that it would be unwise for me or any of us laymen to attempt before this aggregation of distinguished jurists to say anything about the legal bearing of this measure or the laws under the United States Constitution, or the State laws, that you gentlemen are no doubt yourselves better acquainted with than anyone that can come before you. And it is certain that I and the gentlemen that accompany me here to-day do not come with any sort of irreverence toward the law. We are law-abiding people. I think when you look at the lapel of my coat you will admit that the man who for five years bared his breast to the front will not come to you and ask for any law that is against the interests of this land and the glory of this Constitution and the rights we enjoy. We come here, and I come here, before you gentlemen to speak simply as a layman, to speak as one to give you, in my humble way, the impression that a vast majority of people in this country have of the measure that is now proposed before you.

It is true that the parties who are here and speak in favor of this measure claim, and I believe I read in the previous hearings that they claim they have 20,000,000 people behind them who ask for this bill. The 20,000,000 people must be confined to those States where prohibition laws have been enacted.

Mr. Chairman, I personally and all those in whose behalf I may be allowed to speak are opposed to prohibition laws simply because, as has been stated, prohibition has never prohibited. There has never been a State in which prohibitory laws—extreme prohibitory laws—have been introduced where drunkenness has not been going on. The gentleman who stood here this morning said that in the State of Iowa, before the decision of the Supreme Court upon the Wilson Act, no liquor was delivered by the express companies, and that after that decision it was piled up sky high; and that same gen-

tleman admitted that there must have been people in his State who wanted that liquor or the express company would not have brought it there. Therefore prohibition does not prohibit and never has prohibited. As the distinguished president of our association has said, wherever it has gone it has made sneaks and liars and deceitful people instead of making honest, upright citizens.

As to these people who claim that they have got 20,000,000 people behind them in prohibitory States, I have found what you, Mr. Chairman, and you gentlemen of the committee yourselves, have always known, that in none of those States have any of their prohibitory laws been able to crush the drink element—that is, men will drink. Men have always drank, and I for one hail with pleasure any law that you could put on any statute book that would diminish the love for drink. I would hail with delight any law that could be enacted that would stop the evil of drink or, rather, the abuse of liquor.

Everything, Mr. Chairman, is abused in this world—not only liquor—and the man who wants it will get it if you pile your statute books that high with nothing but prohibitory laws. As has been said by the gentleman here who has not completed his argument [Mr. Crain], the law is useless; it will never accomplish anything. But why do these people come here? I am simply giving you the opinion of the layman. I am simply giving you the opinions as expressed by the press that is liberal-minded, opposed to this legislation, the press of which I partly represent a humble share. They are simply coming here to ask you, with the power of the United States flag, the emblem that floats free over a free country, to help them enforce laws in their own States—bigoted laws that they are unable to enforce to the full extent. That is what they are coming here for, and for no other purpose. They are coming here with the subterfuge of regulating interstate commerce, to help them carry out their local-option and prohibitory laws, and they know that they can not enforce them within the limits of their own State.

I am a layman, and I do not wish to discuss the question in its legal bearing, but I want to say that when a man in one of these prohibition States says, "I want a case of wine, and I will order it from some grower in another State and he will send it to me C. O. D." that is a business transaction privileged under the Constitution and under the right; and if Tom Jones says to his friend Smith, next door, "I am going to order of an Ohio wine grower a case of wine," and Tom Smith says, "Order a case for me at the same time; it will make the transportation cheaper," and three or four of those neighbors get together and each orders a case of wine, and that case or cash or whatever it is comes through the border of the State, do you mean to tell me that that bigoted State authority can confiscate the package and say that you must not distribute it among these owners who are private citizens? That is what I understand this C. O. D. law would mean, Mr. Chairman, and I ask you if the United States, with all its power, with all its glory, is to step in and trample upon the rights of a private citizen, though he may live in a State in which his liberal views are those of the minority?

Mr. Chairman, I do not wish to detain this committee any longer. I only want to say this: I live in New Jersey, I live in Trenton, and

I have the honor to be a member of this alliance, the president of the organization in my own city. I have 39 societies, with a membership of over 1,500, and I voice their sentiments, and I voice the sentiments of all the German-Americans in the State of New Jersey, knowing them to be mine and expressing them correctly. I say to you, gentlemen, that you are a judiciary committee and may perhaps have only the power to judge upon the legal aspects of the bill referred to you. Yours may be only the power to determine whether such a bill would be constitutionally right, and you might have to report this bill if your opinion be that it is legal and constitutionally correct.

If you should come to that conclusion and report the bill from that point of view and find that its constitutionality is such that it will leave you no room except to report it, remember this, however, that when you leave this committee room and go on the floor of the House you will subject yourselves and every other member of this Congress, Senate or House, to the strict scrutiny of very liberal-minded voter, be he Democrat or Republican or over the line, who will think that the passage of this law has affected his rights as an American citizen.

Gentlemen, I thank you for your attention.

Mr. HEXAMER. With your kind permission I will next call on ex-Sheriff Edward J. H. Tamsen, who is now school commissioner.

STATEMENT OF EDWARD J. H. TAMSEN, ESQ., OF NEW YORK.

Mr. TAMSEN. Mr. Chairman and gentlemen of the committee, I did not come here with any prepared speech. I was simply listening to the argument of the honorable leader of the Democratic party on the floor of the House, and I am very sorry, inasmuch as he represents my party, that he is in a wrong position on this question.

I have the honor to represent the National German-American Alliance, of which the gentleman who preceded me is a member and is president in another State. I represent the State of New York. We represent bona fide—not as gentlemen generally come before you that represent so many voters—we really represent 200 associations of the State of New York, with a membership of from forty to fifty thousand voters.

I simply came here instructed by our organizations to enter our most rigid protest against the enactment of this law. Why? The gentleman from Mississippi comes here and asks the interference of the United States Government and of Congress, for what? For a law which they find or claim that they have not sufficient power to carry out and execute in their own State. That is a prohibition State. They have the police power, they have their legislature there enact every law which they possibly could, but there is one thing which they can not touch, and that is the private liberty of every citizen of the United States. Evidently, from just listening to the argument here to-day, I find that there is only one object which they want to accomplish, and that is to prevent the buying by a private citizen for his private use, for his own consumption, of any wine, or beer, or liquor, or whatever it may be.

What does this express company business mean? Mr. Chairman, I understand that the members of this committee, as a rule, are

lawyers and are well versed in the law. We will not touch that point, but here is the merchant, and as such I appear before you, a merchant who has nothing whatever to do either with the express company or any wine, liquor, or other similar express business. The statement which Mr. Williams made may be right, as far as he knows it. The C. O. D. business does not mean the sending and consignment of large lots of merchandise. From my own experience in business it simply means that the small parcels of goods that are sent out are covered by the C. O. D. business. If we get any orders from the interior of the United States to New York and we do not know the parties—I am speaking of other branches of business than the liquor business—we usually send the goods by express, C. O. D.; and the express companies act, in that respect, as agent, and deliver the goods and collect the money.

These gentlemen from Mississippi want to have this law enacted simply because they can not get at the private parties who want to drink their wine and their beer. They can have it sent by an express company and they pay for it. There is a man who is a prohibitionist, and his next neighbor is not. He sees that the law does not prevent the neighbor from getting his wine for his private use if he wants to buy it. He orders a case or two, as we do in New York, too, or a couple of cases often, on the other side, from France, from Italy, or Germany, and we get the goods through the custom-house, and they are sent to us, and sent out to the country and collected for a great many private parties. That is what they are trying to get at, that they shall not have the right any more as private citizens to order anything which they want for their private use. In this respect, gentlemen, without being a lawyer, I claim that that law which infringes upon the personal liberty of an individual citizen will be unconstitutional; and when I say here that is a question for the court to decide, how much expense does that involve, how large a corporation must it be to undertake a suit in the Supreme Court of the United States? Why go to such an extreme expense, when we know beforehand that very likely, if my position is correct, it must be declared unconstitutional?

We are here representing this large part of the voters of the State of New York, and we simply enter our protest against any interference on the part of the United States with any of the local prohibition laws of the States. They have ample power, and they can use their power, and it is not for the United States to help them along. We know, as my predecessor told you, and the experience of all you gentlemen is the same, that you can not prevent the drinking of liquors, beer, or wine, by any laws whatsoever. The only thing that you can do is to regulate it in a common-sense way, and regulate it in such a way as the community asks you to do. I thank you.

STATEMENT OF P. A. WILDERMUTH, ESQ., OF PHILADELPHIA.

MR. WILDERMUTH. Mr. Chairman and gentlemen of the committee, there is one thing that impresses me, that I do not believe has been argued before you, and that is the question of contract. I am of the firm opinion that neither Congress nor a State, nor any legislation, can restrain, hamper, or interfere with a contract entered into

between citizens of two or more States. As an illustration, A, a resident of a prohibition State, sends an order to B, in the State of Illinois, to ship to him one cask of wine C. O. D. B receives this order and he delivers this wine into the possession of a common carrier—a steamboat or an express company or a railroad. They then become the agents of B; and under this bill, where it provides that when that wine enters the boundaries of the State it shall become subject to the laws of that State, it then and there steps in and tries to break that contract between A and B, which neither Congress nor any State has the power to do. That contract is not complete until the delivery to A of that specific article of commerce, whether it is wine, beer, or whisky.

I take the broad view, where a question of this kind is brought up, particularly by people who are hostile to liquor in any shape or form, in answer to the question, “Do we believe in local option?” that just in adverse proportion as a prohibitionist believes in repressing liquor do we oppose local option and prohibition.

Mr. Williams, in his argument, failed to bring out the most essential case on the question of the interference and restriction of a State upon liquor shipped from another State. I refer to the decision of the Supreme Court in the case of *Vance v. Vandercook* (117 U. S., 438-452). No doubt you gentlemen are all familiar with that case, more so than I am.

In bill No. 4072, now before you for consideration—

The CHAIRMAN. You gentlemen are referring to the bill that the committee had here last year. I want to call your attention to the fact that the present bill is No. 3157. There is some little difference between the two.

Mr. ALEXANDER. There is no difference between the Hepburn bill that was introduced in the last Congress and the Hepburn bill introduced in this Congress. The Williams bill is one thing and the Littlefield bill is another and the Hepburn bill is another; but the Hepburn bill that was introduced in the last Congress is the same as the Hepburn bill that was introduced into this Congress.

Mr. PARKER. It is the same as the one reported at the last session.

Mr. ALEXANDER. They are identically the same.

The CHAIRMAN. The bill that you gentlemen refer to is identical with the bill that was introduced at the last session.

Mr. WILDERMUTH. In the bill now before you for consideration there are three cardinal principles in issue which should not be overshadowed by other matter. First, Whom will this bill benefit should it become a law? There are but few States who have prohibitive liquor laws who ask for or desire this legislation, so few that, in comparison, is it right or proper to enact it? It can be of no benefit to any State as a whole, for the manner of its enforcement, both Federal and State, is but conjectural and chaotic. Broadly speaking, I know not in what way any benefit is conferred excepting upon a few salaried professional agitators, who have from time to time demanded and importuned your honorable committee for prohibitive liquor legislation, whose demands upon you for this kind of legislation is insatiate. If you pass this bill it will not be long before another will be presented with the same object in view, to wit, repression and prohibition.

First came the Wilson bill of 1890, then came the abolition of the

bars of the Senate restaurant and of the House restaurant. Following that came the abolition of the canteens of those helpless men who enlisted under the Stars and Stripes, and for what? To favor a few who did not serve the Stars and Stripes, but who served their fanatical ideas, and possibly their pride. Now, they have gone one step further. There has not been much opposition, as I understand, to this bill already passed, on the question of liquor, such as I have named; and they bring this matter now before you, known as the "Hepburn-Dolliver bill." When they get that through, where will they stop, gentlemen, or will they ever stop? They will keep going on until the citizens are bound to come here before you and enter their most strenuous objection to any further liquor laws, and particularly in this attempt to commit the United States Government to prohibition, pure and simple, if this bill becomes a law and the law is sustained by the Supreme Court of the United States.

I am informed that these agitators, who declare that they represent many denominations of religion, have been accused of deliberate misrepresentation and deceit, if not actual fraud, in disseminating their prohibition doctrines, using the frank of members of Congress to that end. Second. Why should this bill become a law? Of the forty-five States comprising our Union there are perhaps five which want this legislation because there remain many citizens of those States who continue to use liquor despite its laws, and practically they ask your assistance to deprive those citizens of the means and opportunity of obtaining any liquor. While the bill purports to protect the citizens in their constitutional right to use liquor, it nevertheless may deprive them of this right if the construction and enforcement of this bill, together with prohibitive State laws, are delegated to and left with the State.

What is to prevent a State, under these conditions, from imposing such restrictions, regulations, and burdensome conditions upon common carriers and others so as to destroy it, as stated in the case of *Vance v. Vandercook Company* (170 U. S., 438-52)? The right of a citizen of one State to import liquor for his own use is assured by the Constitution of the United States and does not rest upon the validity of this bill or any other legislation or the laws and restrictions of any State. This principle was held by the Supreme Court of the United States in the case quoted. If a State is so impotent that it can not enforce its prohibition laws, by what right or reason does it appeal to the Federal Government, where it practically asks all the other States to assist it to enforce a law obnoxious to many of its own citizens within the State?

As a prohibition State law is to-day it has plenary police power over all liquors within the State, sold or for sale, and the proposed legislation can not extend any State power beyond its boundaries or result in anything more than extended litigation. As well ask you to prohibit common carriers from delivering coffee and beef within a State because some of its citizens drink and eat too much of it. Twenty-five years ago legislation of the kind before you would not have been considered. A dangerous precedent may be established, and where will legislation of this kind end?

Third. This bill, if passed, commits the Federal Government to prohibition, which is unwise and unwarranted. Congress has the

sole power over interstate commerce and the necessary regulation thereof, but it has not the power to prohibit, restrain, or hamper a common carrier in its discharge of commercial intercourse between States. Liquor is a taxable and legitimate article of commerce and has always been so recognized by the Federal Government and four-fifths of the States. When a common carrier delivers liquor within a prohibition or other State, it is only after its delivery thus that it should become subject to the State law. If the consignee makes, or attempts to make, any unlawful use of the same, that is wholly a matter for the State, and this bill can not give any State jurisdiction, directly or indirectly, before that time. In attempting to do so it interferes and restrains, it does not regulate, interstate commerce.

The powers which prohibition States hope to have conferred upon them by the bill have already been attempted in South Carolina, where almost similar provisions were enacted by the State, and afterwards such restrictions were added as to virtually destroy it. In this matter the Supreme Court interfered (*Vance v. Vandercook Co.*). In view of the principles held in that case it is my humble opinion that Congress has not the power to delegate its regulation over interstate commerce so that any State has jurisdiction over an article of commerce before its delivery to the consignee.

How can a common carrier know whether the liquor in its possession for transportation is, to use the words of the bill, "bona fide and intended solely for the personal use of the original consignee?" What is to prevent a State from making and enforcing such obnoxious restrictions upon the common carriers so that they would decline to receive liquor for transportation? The views of the Hon. Richard Wayne Parker on this score are worthy of your further consideration, where he says that it makes lawful vexatious restrictions on transportation as to the purpose of each individual shipment in which the burden might be thrown on the consignee of proving that it is for his personal use. To this I desire to add that this burden might also be cast upon the carrier.

The title of the bill, from its probable effect, should read "A bill to restrain liquor, an article of commerce between the several States and with foreign countries in certain cases."

I respectfully submit that this bill is inquisitorial legislation, to be adversely reported.

Mr. TIRRELL. I would like to ask you one question. Is the Hepburn-Dolliver bill any more than this: That each State shall be allowed to enforce its own laws in the regulation of the liquor traffic, and are you opposed to that?

Mr. WILDERMUTH. I am not opposed to a State enforcing its laws, but I am opposed to the Federal Government assisting that State—going out of its way in passing a bill to the effect that it gives that State jurisdiction over a certain prescribed article before it reaches the consignee. There is a vast difference here, as I understand, as to the idea of the mark of delimitation between the State and the Federal statute or Federal laws or Federal powers. My broad contention is that Congress can not confer upon the State any right to take any article of commerce until it reaches the consignee. The burden of proof is not upon the consignee or the consignor. There is a contract between them. They are in different States, and the moment

that liquor, as I said before, crosses over into the State where its sale is prohibited, I say that State, and Congress can not give it the power, and it has no control over that until it reaches the hands of the consignee. Then the State has its officers, and they can enforce its laws. It is not unlawful to use liquor in a prohibition State. Is it unlawful to use liquor in a prohibition State or just to sell it?

Mr. TIRRELL. It is not unlawful to use it, of course.

Mr. WILDERMUTH. Well, I see this bill provides for the use, consumption, and storage. I do not see any difference between the words "use" and "consumption."

Mr. TIRRELL. Then your arguments come right down to a question of law, do they not?

Mr. WILDERMUTH. Yes, sir; this is a question of law and the interpretation of the law, but I do not think that the Federal power can extend within the State, no matter what jugglery of words you may use. You can not prevent that contract between the citizens of those two States, notwithstanding the State law against the use of liquor or its consumption or its storage; but you can, by a State law, prevent the sale of liquor, and that is all any prohibition State can do, is to prevent the sale of liquor, because the right to use liquor does not depend upon an act of Congress or of the State. It rests upon broader ground than that, upon the Constitution of the United States.

Mr. HENRY. Does your argument apply to any article of interstate commerce?

Mr. WILDERMUTH. Every article of interstate commerce, absolutely every article that is legitimate.

Mr. HENRY. Suppose this article of interstate commerce, instead of being intoxicating liquor, should be something that is highly explosive and dangerous or an article of interstate commerce that is noxious and would create disease and pestilence in the State, what about the State taking charge of it when it reaches its State line?

Mr. WILDERMUTH. The State has plenary police power to seize adulterated goods, where they are against public health, or goods that are dangerous to public life or in danger of destroying property, but liquor is not dynamite, pestilence, and disease.

Mr. HENRY. Did not Judge Fuller, in delivering the opinion in the Rohrer case (140 U. S.), base it strictly and solely on the ground that the State was authorized to exercise its police power; that it was a police regulation, strictly, in regard to liquor?

Mr. WILDERMUTH. Yes, sir.

Mr. HENRY. Therefore putting it on the same basis as explosive articles or articles dangerous to the health of the people, and so forth?

Mr. WILDERMUTH. That is very true; but that is not relevant to the question here.

Mr. HENRY. It seems to me that it is very pertinent.

Mr. WILDERMUTH. There is a vast difference between dynamite and liquor. The question before us, I have to say, sir, is that of liquor.

Mr. BRANTLEY. You made a distinction between what is a legitimate object of commerce and what is not?

Mr. WILDERMUTH. Yes. I do not wish to be understood by Mr. Henry in this matter, and I do not say, as a broad proposition of law, that Congress has not the right to regulate commerce between the States and foreign countries; but I do most emphatically assert

that Congress can not place liquor on a par with dynamite, and can not place liquor on a par with pestilence or disease. Those are entirely within the organic act of every State and Territory to control, and they hardly need the assistance of Congress.

Mr. HENRY. Understand me, I would not have Congress say that at all. I would not have Congress to legislate in that direction, but would we not rather be leaving it to the States to say what is dangerous to their public health and safety, and so forth, in the exercise of their police powers and let Congress take its hands off of the matter?

Mr. WILDERMUTH. I can see the line of your reasoning.

Mr. BRANTLEY. I would like to ask if Congress would not have to take its hands off still further and refuse to collect taxes for the sale of liquor? If Congress is going to recognize that it is a legitimate business, and people can pay taxes and engage in it, can Congress delegate to the States the power or take its hands off so that the States can declare that which Congress has said is legitimate business is not a legitimate business—that is, that the State could contradict or act in conflict with and do away with the act of Congress itself?

Mr. WILDERMUTH. Well, a State has full power over liquor, and if Congress does not exercise its right or the Federal Government does not exercise its right of taxing, of course, there is a dual question there. The United States Government will issue a license for the sale of liquor and the State will also issue a license for the sale of liquor.

Mr. BRANTLEY. The United States does not issue a license; they collect a tax.

Mr. WILDERMUTH. Yes; I should say it is a tax. So that there is a dual question there. It is the same as our citizenship: We may be citizens of the United States and yet not citizens of the State of New York. In other words, I am a citizen of Pennsylvania and not a citizen of New York, and I am also a citizen of the United States; and so it is with this taxable commodity—liquor. I can readily understand the line of your reasoning, Mr. Henry. Here is dynamite or any high explosive, and a State would be powerless to prevent a railroad from bringing that commodity through its territory or storing it there. To prevent companies or corporations from transporting high explosives they had to appeal to Congress to pass an act covering or controlling the shipment. But I hope, gentlemen, that you do not take that view that dynamite and liquor are synonymous. [Laughter.]

STATEMENT OF DR. GEORGE RICHTER, OF ST. LOUIS.

Mr. RICHTER. Mr. Chairman and gentlemen, the Missouri branch of the National German-American Alliance asks your permission to state its views of the bill under consideration.

Our Missouri society has more than 75,000 members, all of them United States citizens and intelligent voters. We combined only a few years ago, and our object is to promulgate the ideal principles of the Constitution of this country among immigrants, to aid them in their endeavor to become useful members of the community; to

uphold the memory of your and our ancestors, of whom we are justly proud; to conserve closely the enforcement of all laws in harmony with our obligations as law-abiding citizens, but also to oppose any and all attacks upon the noble, time-honored institutions of a Republic which guarantees certain rights to every being within its domain.

A large number of our members—I among them—had studied the conditions of the “civilized” nations and had recognized the superiority of America in all governmental matters; the most important to us being that liberty which alone can conduce to the happiness of intelligent and intellectual people. Thus impressed, we decided to bring here our fortunes, our youthful energies, and our conscientious enthusiasm.

We applied for citizenship. It was granted us under an obligation to uphold the principles of this Government.

Since that time we have lived here with you and have been part of you. Our children were born here; we and they have shed blood to uphold the Union. We have worked jointly for the common weal. We have done our share in developing the resources of America. We have contributed our modest share to the wealth and glory of this new and beloved fatherland in field, in factory, in college, and in court.

I ask you to note, too, that our ideals have not led us to the amassing of immense individual fortunes, but have found realization in making happy and being happy and in directing our lives along the lines of modest desires.

Not the accident of birth, but the exercise of an earnest thought and a free choice made us American citizens, glorying in the greatness of this nation and in its proud rank among civilized nations of the world.

How seriously all of us take our duty you may conclude from the fact that all of our workers in this alliance are volunteers; that not one draws a salary beyond mere office expenses; that we meet all expenses by a per capita tax of 2 cents per annum.

We are at all times mindful of our duties as citizens, and we guard our rights with equal jealousy.

We recognize in the bill before you an attack against the very spirit of that Constitution which has prompted us to apply for citizenship and to continue under the flag of this Republic as its most ardent defenders. This and previous attempts to destroy by legislation the freedom of the individual in his innocent enjoyment of life have had for their covert purpose a paternalism worse by far than the most hateful absolutism of Asiatic tyrants.

Our alliance does not represent any political party. It will never enter into party politics, for our constitution expressly forbids it. When we appear before you here, therefore, it is not to aid or oppose any political party. All we ask is to be heard in a matter which we believe concerns every citizen, irrespective of his political views.

There is no gainsaying that the measures under discussion aim at the accomplishment of what is popularly termed prohibition. The advocates of prohibition we believe to be generally sincere in that they seek to better the condition of the masses. They claim that alcoholic drinks lead to all kinds of excesses, fill hospitals, asylums, and poorhouses, and tend to ruin family life.

But in their zeal they disregard private rights, the sanctity of the family life, the liberty guaranteed by law; in fact, they are deterred by no consideration of their neighbor's freedom or property. They are running amuck.

Their assertions as to the danger lurking in all beverages into which alcohol enters have been repeated myriad times without serious contradiction, because the sober masses who temperately enjoy life's pleasures looked at the dispute as if it were only a passing fad. But, finally, many people are inclined to believe false representations repeated so often, and it has come to pass that defense of views not in accord with prohibition doctrine is sneered at. Such defense is considered as coming from parties interested financially, and consequently not entitled to much credit.

Our American alliance is absolutely regardless of the interests of distillers and brewers and independent of both. Our principles are based upon the welfare of our families and that of our friends. We have no professionals in our employ to lecture or preach. We of the masses command no capital other than a wealth of love for our fellow-citizens and a desire to serve them in the name of a healthy liberty. No private business, no political party, no church is taxed by us.

Prohibition has no place in any creed, with the one exception of Mohammedanism. Why, then, should it awaken such a fanatic spirit in the bosoms of so many people?

How can Prohibitionists, for instance, claim that alcohol in any and all quantity shortens life?

I know of no better authority from which to refute such an audacious assertion than the United States census of the year 1900, a work certainly not compiled by alcoholics or influenced by the liquor trade.

There you will find on page cclx of Volume III the death rate:

	Per 10,000.
All occupations.....	15.0
Clergymen	23.5
Saloon keepers, liquor dealers, bartenders, and restaurant keepers.....	13.3

In these figures the census emphatically contradicts the not always trustworthy statements of life insurance companies. It is, however, more than possible that in case of a saloon man's death alcoholism is registered as a matter of course, while a more careful diagnosis is made for other people. Death due to alcoholism directly is quite rare, but where a person has been known to "indulge," the few less conscientious practitioners jump at conclusions. It is even so with statistics concerning asylums. As long as superintendents of such institutions are known to jump at conclusions, their statistics are just as futile.

Now, if we would imitate the reckless example of our reverend adversaries, we might proclaim that total abstinence shortens life! For clearly there are more habitual drinkers among the saloon men than among the clergy—begging their pardon.

The remarkable but undeniable fact that the expectation of life is so favorable to the dealers in alcoholic beverages should not either be attributed to the theory that their constitution becomes inured to alcohol. I refrain from dwelling on this point, but will only suggest

that the ladies and gentlemen who are so impatient of all argument against prohibition might prepare a bill providing that this and some other pages be torn from the official census report.

The fact just mentioned, the experience of the world's history, daily observation which is not distorted by preconceived notions teach that where people have at all times free access to even the strongest drinks they will not become drunkards. When there was no such tax on whisky as now, when a few cents would buy more than an average man could stand, there was not more, but probably much less drunkenness than there is now, even in the so-called prohibition States. I know this can not be proven by statistics. But I know it is the opinion of reliable observers. And as we are the descendants of people of those days, it would be a queer argument to insist upon the presumption that the habitual use of alcoholic beverages was the cause of degeneration in descendants. Or is this present crusade against the joys of life in every respect, perhaps, a symptom of degeneration?

If on every street corner in what I beg to be permitted to call a free State there was to be had, free of all expense, an unlimited amount of good liquor, how very few people would partake of it at all, and how little difference, if any, it would make in the morals of the populace? If, on the other hand, the same thing were to-day attempted in a prohibition State, picture the result for yourself!

I appeal to everyone's personal experience. There is no doubt that to-day the majority of our fellow-citizens has not only the means, but also the taste, or call it a habit, for an occasional drink. Now, consider the very small fraction of a percentage of people who can not control their appetites—I mean in the free States!

And who are the immoderate? Only such as have lived under coercion or who are abnormally constituted. The former are victims of most unwise laws, the latter can never be cured by any kind of a law. Only patient education can accomplish anything with them. Wanton force provokes reckless transgressions. It is a great pity that the experience with military canteens can not be cited in proof of this, for where the mind is guided by preconceived ideas even the plainest facts are ignored.

They are no mean authorities who say human nature demands more than plain food. It demands occasionally some stimulant. Prohibitionists do not deny it. They do not object to coffee, tea, or strong spices in their food, though all these, if taken in excess, are quite harmful. Why have they singled out alcohol for their pet aversion?

Alcohol is present everywhere. The most passionate Prohibitionist can not avoid it. Fresh bread contains 1 per cent alcohol, or more. We eat starchy food, flour in many shapes, sugar, sweet fruits, and the like. What becomes of it in normal digestion? Part of it is separated into carbonic acid and alcohol. A considerable amount of alcohol is created in our digestion and makes us sleepy after meals. No wonder that many ladies, who delight in candies and sweetmeats, do not care for more alcohol. They have already eaten an abundance of it. An additional amount would sicken them.

There is alcohol in the atmosphere. Thousands of tons escape into the atmosphere from the bakeries every day, for the fermentation

of the dough generates alcohol, and one might aptly say a bakery is virtually a distillery in which the larger amount of alcohol is wasted, while we save the swills for daily food.

If it is actually impossible to escape from alcohol in our daily, sober life, how very foolish to call it a poison under all circumstances. Nobody denies that excess in the use is harmful. Hydrochloric (muriatic) acid concentrated is certainly one of the strongest caustic poisons. But in great dilution, say, 0.1 per cent, it is a normal constituent of the gastric juice. Without this so-called poison we can not digest meat or eggs. Its absence hastens the death of those suffering from cancer of the stomach.

Excesses are harmful, but what incites excesses? A craving due to denial, followed by an opportunity for satisfaction. It is the same with all kinds of luxuries and enjoyments. The first opportunity betrays one into overindulgence. A sound policy will not absolutely forbid harmless enjoyments. It must render them eventually harmful.

The much abused and frequently ridiculed term "personal liberty," incending phrase to those who would exercise a foolish paternalism by general coercion, means the freedom to act, to live, and enjoy life at one's own pleasure, as demanded by the plainest common sense and guaranteed by the Constitution, with the one restriction that the acts of the individual shall not interfere with the same rights possessed by everybody else. As soon as the exercise of my personal rights endangers any one of my neighbors, then the community has a duty to enforce a restriction. Such restriction must, however, never abrogate the fundamental principles of personal liberty. It is a deplorable fact and a sad commentary on our tendency that fair-minded American citizens can to-day laugh at the words "personal liberty."

Police laws endow the authorities with ample power to prevent harm being done to our neighbors or to ourselves. Such laws should be enforced firmly. A bad example set by a drunkard is easily cared for under the law; but does it stand to reason that because a very few people can not control themselves, all the rest of mankind must be enslaved? Because some people steal or take undue advantage in business dealing, shall all right on property and all business methods be abolished? Because some marriages prove to be unhappy, shall all marriages be annulled? Because one or two shepherds have been black sheep themselves, shall the practice of religion be declared illegal?

The arguments of the Prohibitionists are in this respect worse than illogical. They are sheer nonsense, unworthy of rational minds.

Excess in concentration means the indiscriminate use of whisky, or brandy, or rum. Strong liquors are not only a most useful and beneficent medicine, but often a boon to the exhausted. An occasional swallow of liquor has been declared by no less an authority than Doctor Wiley, of the Agricultural Department, as harmless to the average man. As to wine, the history of civilization, the poetry of all times and all nations bear witness.

An intermediate between stimulant and food is the ordinary beer. It is both, or either at the same time. People advocating—not temperance, for every sane person advocates temperance—but prohibi-

tion, make it their point to ridicule beer. They do not know whereof they speak. The average beer contains an average of 3.5 per cent alcohol, against about 10 per cent in wine and 50 per cent in whisky and patent medicines. But beer contains, besides, large percentages of sugar, proteids, nourishing salts, and extractives; I shall not tire you with repeating analyses published many times. Such substances are present only in traces in the other alcoholic beverages, while in beer they establish a decided nourishing value.

True, he who drinks large quantities of beer at a time will have taken an absolutely larger amount of alcohol than others in a relatively small amount of whisky. But even there is given an illustration of the difference in concentration. The same amount of alcohol greatly diluted has not nearly such an intoxicating effect as when concentrated. Just so, as stated before, concentrated muriatic acid, even in small doses, is a most vigorous poison, while a larger quantity in great dilution is a normal constituent of the stomach.

The amount of alcohol consumed by the average beer drinker is known to be harmless. Excesses in beer rarely produce effects similar to those of smaller excesses in whisky. Nations with whom beer is the national beverage are known to be healthier than those who drink the strongest liquors only. It is true that drinking, even of beer, during working hours lessens the efficiency of the laborer. It is good policy not to permit the use of stimulants during work. But this rule does not apply with eating. The dyspeptic condition which afflicts certain people is not due to the small drink they may have been taking, but to the haste with which meals are eaten at lunch time. The coffee or tea drinker is not a whit better off than the user of other stimulants. He is even more apt to become dyspeptic, as coffee and tea are nerve stimulants pure and simple, without any of the other virtues contained in beer. This, I recognize, needs an explanation.

It is universally known that beer passes rapidly through the system. What little alcohol it contains is soon split up. There is a striking analogy between blood and beer in a chemical as well as in a physical sense. At the beginning of digestion beer becomes isotonic with blood, whereby it becomes the most wholesome of all beverages. Even when taken immoderately it will pass through the body faster than any other liquid, thereby flushing the system effectually. Under certain conditions beer is preferable to coffee, tea, lemonade, and even water. Skimmed milk would be superior if it would stimulate (as may be indicated) and if it possessed "keeping" qualities. These it has not. It is liable to spread infectious diseases. Beer, on the contrary, is not only aseptic, having been sterilized in its manufacture by boiling, but it is directly antiseptic. The typhoid bacilli and the cholera vibrio are killed by beer in a few minutes. The same may be said of liquors, but they do not serve to quench the thirst.

All of these statements are contradictory to the report of a number of physicians of the city of Toledo, which has been circulated under the frank of Senator Gallinger. I fail to find among the names given there anyone known well beyond the limits of their town, or anyone who has made his mark in scientific literature. But granted that their opinion corresponds exactly to their experience, or to their conception of facts, it is to be remembered that the ex-

perience of a few practitioners must be necessarily limited and could not compare with such immense statistics as those represented by the United States census. The latter is certainly not biased.

There was a time in this country—it was about one hundred years ago—when temperance societies were formed which worked for the substitution of beer for rum. Long before that the New England colonies were founded. Their clergy did not object to alcoholic stimulants, however pious they were. It is certainly right to caution the inexperienced against the dangers lurking in the reckless consumption of alcohol. But Prohibitionist friends are not content to stop there. They go further and attack the innocent pleasures of the people and the recreation of the masses. They want to make the transportation of beer, of the least harmful of all beverages, impossible. They would know, if they cared to listen to arguments, that evils are intensified thereby. Forbidding what is harmless leads perverse men to seek what is harmful, regardless of price. Patent medicines, wood alcohol, dope in any form is procured. Men become fiends, honest people break the unwise laws, passions overpower the weak. Crazy from drink! Who is it? He who suddenly gets hold of what had been denied him for too long a time.

But acts of violence are not the only crimes that disgrace our civilization. Crimes also occur among total abstainers.

There are some more subtle and not less revolting—those perpetrated by strictly sober individuals, like forgery, fraud, commercial tricks which amass, unlawfully, immense fortunes by frenzied financial manipulations. Yea, there is no lack even of acts of extremest violence done to honest people by fanatics who destroy the property of their opponents with hatchet and dynamite.

We oppose openly all measures which interfere with the peace of the people and the happiness of the home by introducing hypocrisy as a factor in daily life. Making hypocrites out of those whose motto was fair play, is corrupting the very genius of America.

The measure before you must result in such a condition. Forbid the milder stimulant—it is too bulky for clandestine transportation, for smuggling—and only the strongest liquors will be procured in spite of the most draconic laws. And why all this? I believe I see the cloven foot under the garb of artificial and officious morality. The measure is vitally antagonistic to a very large and important class of citizens, whose modest enjoyments of life are as a thorn in the eyes of some: Those who have sought and found shelter here from oppression by state and pulpit in Europe, and have devoted their unbounded idealism and all their not mean abilities gratefully to this Republic, who have proven to be fully equal in patriotism to those who have landed here but a few years before us. Or why should it be said, as it is said, "They are the Germans, the Dutchmen, who oppose prohibition." Here we are Americans, who uphold and have always upheld the flag of this country, and who are ready to die for it. We have sworn to the Constitution. We are also proud that we hail from another civilized country which has done its share in the world's progress.

Our nonpolitical, but humanitarian, alliance counts in America over half a million members, though established only about six years. We are all honest citizens and voters. We appeal to your patriotism

in this matter. Your wisdom will find its reward at the polls. For we shall never forget those who have proven that they have the welfare of all good citizens equally at heart and not only the whims of a coterie of imitation reformers. America for the Americans; for liberal and fair-minded women and men.

DR. GEO. RICHTER.

MR. TIRRELL. Will you please inform us if you obtained your figures in regard to mortality from the statistics of any life insurance company?

MR. RICHTER. I obtained them from the United States census. I have the volume here. The statistics of life insurance companies I do not in any respect consider final, whether they be financial or vital statistics.

MR. TIRRELL. What is the volume and what is the page of the census report?

MR. RICHTER. It is volume 3, page 260.

STATEMENT OF HENRY DETREUX, ESQ., OF PHILADELPHIA.

MR. DETREUX. Mr. Chairman and gentlemen of the committee, I will not venture on the field that has been touched upon by some of the speakers, and I will also not venture to state here how large a quantity it takes to get up a good argument. [Laughter.] But I will say that I am glad that I have come here to listen to those arguments. We are here as representatives of a class of American citizens that have taken no small part in the building up and development of this country, and who were always ready to fall in line when the country called, and I dare say that we will always be ready again when the country will need our support.

I have the honor to be president of an organization composed of over 30 societies, and I am an honorary director of just as many societies. I am also the vice-president of the Philadelphia branch of this German-American alliance, and I dare say that our people are opposed to prohibition in any shape or form. They regret to see the conditions as they are in this country that lead to so many misunderstandings between the different classes of people. They feel sorry for those that have been led astray by specious arguments; for those that have been led to the path that leads to the destruction of all love for law. I regret very much that there are men of high standing, that there are men among our great men that have been misled by false arguments. The history of prohibition shows clearly that it does not prohibit the use of intoxicating liquors, but tends to introduce them in their more obnoxious and dangerous forms.

This question will be discussed, it will be debated, and the problem that lies therein will remain unsolved for ages to come; and yet we see people come around here every time Congress meets to attempt to solve this problem in their own small, crude way; and if they should be successful in this instance, who would suffer the most? Those that obey the law; and those that would be among the first to obey the law; and among those are the Germans, the German-Americans, and Americans by the millions that sympathize with our views. If this bill should be successful those people would obey the

law. Yes; they would obey the law, but they would not forget those that would be the perpetrators of such an act of tyranny.

You may listen to the best arguments in favor of the bill, you may hear the finest eloquence, and you may say they try to put the stamp of sincerity upon their words, but they will never convince fair-minded American citizens of the virtue of prohibition, no matter in what shape or form it is proposed. If we use the Government of the United States to help to foster the pet ideas of those people, what will become of the United States? If our people will bear this burden for any length of time they will surely not forget those that are back of it, and helped to pass this bill, and helped to put this load upon their shoulders.

I have left my place of business behind, and I must soon depart, and therefore I must cut my remarks short. Eventually this legislation will tend to get the Government of the United States into trouble with the single States; and if it comes so far that the people become aroused in general, and the party that I love so much will suffer, then I will say: "I was not one of them that helped to do it."

Gentlemen, I can not really understand how an enlightened body like the Congress of the United States can give way so far to a single class of people and set aside the rights of a large majority for the sake of pleasing a small minority; and if this bill becomes a law, as I said before, then you will have given away the rights of the single citizens of the United States. And I entreat you, gentlemen, not to give your consent to such an act, to such a measure, that will have the most evil results in the future.

STATEMENT OF NOAH GUTER, ESQ., OF NEWARK, N. J.

Mr. GUTER. Mr. Chairman and members of the committee, I had the honor to appear before you last year on the same bill which is up for discussion to-day. I come here to enter the protest of the liberal people of the city of Newark, a busy, liberty-loving class of citizens that have nothing that they love more than their liberty. It is not a question with the people of the city of Newark that I represent of the transportation of liquor or anything of that kind. It is the principle that is involved in the legislation represented by the so-called Dolliver bill. We do not believe that there should be such legislation as to prohibit the citizens of this great country—in one part of it—from having something which those in the other part can enjoy; and we do not believe that if a law is a good law it should be passed for one part of this great country and not affect the other part of the country.

We believe when we vote for our Congressman that he comes here to make laws for all the people of this great country and not for a part of them. That is the principle that is involved for us in this bill, and I come here again before you to protest against such legislation. We believe that if the bill is good and should be passed that it should be passed for the whole country, and if it is no good for most of the country, then it is not good for the few States that it is asked for.

STATEMENT OF WILLIAM F. REMPPIS, ESQ.

Mr. REMPPIS. Mr. Chairman and gentlemen of the committee, I believe you must be rather tired listening to speeches, and I know when you hear a succession of them it becomes monotonous. I did not know that I was to address you until a few minutes ago.

I am not a lawyer, and I know and feel that you know all about the law points. I am simply a business man. I employ several hundred people, and I have been a temperance man all my life. I like to see the cause of temperance advanced, but I do not believe that it can be advanced by compulsion. I never did believe that. I have never seen it advanced in that way. I believe the only way to advance it is by education. When you try to compel a man to be good you usually do not have very encouraging results.

There is no evil in liquor properly used. The evil is with the consumer who abuses it, and every State can make laws to prevent, as far as possible, its own citizens from hurting themselves in that manner, but it does not need the United States Congress to interfere with the constitutional rights of a citizen.

It is my opinion, gentlemen, from what I have heard here that this bill is not quite sincere. I say this without meaning any reflection, but the Hon. Mr. Williams himself stated that there is one express company that has already given up taking goods of that character into that State voluntarily. The apparent object of this bill is to regulate, but, as a matter of fact, it means to prevent the sale and the use of these liquors; and that I do not believe there is any constitutional reason nor any constitutional right to do. I think when regulation goes to that point it is no more regulation, but it simply means prevention, and it appears to me that this bill by a roundabout way tries to discourage, or rather prohibit, their own citizens as well as the carrying companies by hampering them in such a manner that they will positively refuse to carry those goods; that seems to be the object.

I have the highest regard for any man that does not drink. That is his own right, and I admire him for it. In my own business I give temperance people always the preference, but I do not mean to say that I give preference to prohibitionists, because I like to have people with sane and reasonable views in my business, as I like to meet them anywhere else. There are very sane people and very sincere people in the ranks of the prohibitionists, but it is my opinion that their views are not well balanced and are not broad or in conformity with the liberal spirit of this country. Of course they may have a different view. We all have a right to our own opinions. It has been stated that the State has the right to regulate. Certainly. Nobody denies that. You are trying, or this bill tries, to cut out one article—liquor.

I see no reason, if you once want to make laws of that kind, why you do not cut other articles, patent medicines, which are much more dangerous, and which usually go into the stomachs of weak women who can least afford to have that kind of concoctions in them. And I also know that whisky, which I abhor, and other stimulants, alcohol and whisky, in prohibition States are about the worst that you can get anywhere. You may as well bring in a bill to prevent the sale of

patent medicines, or to go further and prevent the sale of medical appliances which are used to commit race suicide. You will find lots of things which you can prohibit on the ground which has been mentioned by Mr. Williams that it would be for the public good and morality. The public good and morality largely rests in the hands of the citizens themselves.

This is the broad ground which I take, and I do not believe that Congress should be a party to or countenance prohibition, which it undoubtedly, in my opinion, would do by the passage of this bill. I do not think that Congress ought to array themselves on the side of any one State or any one party, and certainly it should not interfere with the constitutional rights of the citizens.

In my opinion this bill is aimed to prevent the people of that State, who wish to use liquor, from using it, by surrounding the getting of liquors with such obstacles as to positively make it prohibitive to get them. The only thing they have to do is to use the power which will be given to them under this statute in such a manner as to have the transportation companies simply refuse to accept liquors in any kind of package, and that seems to me to be one of the intents. I may impute improper motives to them, but that is the way it appears to me. Nowadays we look at some things that aim at our personal rights with some suspicion. But if that is not meant, put the bill in such shape that it can not be misunderstood, so that the power which you put in the State or give to the State authorities can not be abused.

If Mr. Williams is such an unholder of State rights, why call in the United States Congress? I come from the county of Berks, in Pennsylvania, which is called the Gibraltar of Democracy in our State; and in the opposition to this measure I have behind me not only the 1,200 members of our organization, but, I may say, 99 per cent of the population of that part of the country of Berks County Democrats and Republicans alike. We stand united in opposition to this measure.

It seems a trifling measure, but to us it means more. It means an interference with our constitutional rights, which we do not think is warranted. We think that this bill is not necessary, that it is uncalled for, vicious, and should not be passed; and, I trust, gentlemen, that your good sense may not allow it to be recommended.

STATEMENT OF MRS. FERNANDE RICHTER, OF ST. LOUIS, MO.

Mrs. RICHTER. Mr. Chairman and gentlemen of the committee, two years ago I had the honor to appear before your honorable body in behalf of this same cause. I am glad to state that I have not changed my opinion, and I therefore speak from the same point of view. Just as I did then, I represent to-day those women of the United States who dare to have their own opinion in a matter which has hitherto been monopolized by a certain class of women who pride themselves that they voice the sentiments of all their sisters. This is especially true concerning those 10,000 women of Missouri who joined in the protest against Governor Folk's definition of Sunday as a general day of rest—a protest which was issued some time ago by the Missouri branch of the National German-American Alliance.

Why did these women, mostly wives and mothers, from all classes of our population, who rarely trouble themselves with affairs outside their homes and family circles, declare themselves for a so-called open Sunday—plainly spoken, for the open saloon on Sunday?

They do not frequent saloons, and, according to the opinion of some women, they should be glad that the law, at least for one day of the week, keeps the male members of their families out of such a dangerous place.

They became interested, notwithstanding their general aversion to "woman in politics," in such public affairs as affected their home life, in arguments pro and contra prohibition, and even in such a nasty thing as the so-called "liquor question."

They began to look around, and they saw that this Sunday law, which proclaimed with a loud and pious voice the welfare of the people, led just to the opposite direction—to degradation—just as all the laws do that would enforce prohibition.

Prohibition affects the middle classes only. It has nothing to do with the very poor; it does not disturb the very rich; but it degrades the working classes—the bone and sinew of a nation—morally and physically.

Prohibition takes away their recreations and degrades them to the condition of a working machine.

Prohibition loosens the bonds of family life. Prohibition undermines a wise education.

Let me explain these seemingly paradoxical assertions.

We all know that a joy of living, that an appreciation of the good things the world has bestowed upon us, that innocent pleasures, that merry laughter, and all wholesome recreations are weighty factors in human life. A man who has been working hard all day, no matter what his profession or trade, finds recreation in meeting his friends and congenial company after working hours. A woman who has been drudging all day in her household and with her children has also the same appreciation of recreation and the right to enjoy it.

Prohibition not only forbids this, but it drives men and women into separate clubs to find separate enjoyments. One of the main interests of mothers and wives lies in sharing the diversions of men. The experience of centuries has proved that wherever families jointly frequent public places—where they meet good company—and where light drinks are served and good music is rendered, the moral standard has been the highest and comparative happiness has prevailed. As man and wife should work and strive in good fellowship for their own and their children's happiness, so they should be the same good comrades in the hour of recreation and not separate into different groups or clubs. The presence of good women always refines the thought and conduct of men, and in their presence men refrain from all kinds of excesses.

Prohibition abolishes all the innocent enjoyments of summer gardens and like places of amusement. It banishes the light drinks from home tables and substitutes a stolen sip of something strong in the closet or under the straw in the barn.

Believe me, in that household where beer or wine is found on the table, subject to modest use, children never think of craving for it. They will partake of the little that is given to them as naturally as

they eat an apple or a piece of candy and it will be nothing strange or exciting for them when they taste it for the first time as half-grown boys and girls. It will not be the forbidden fruit. And you know how dangerously sweet that tastes.

I never saw so many boys drunk and noisy on the streets in our quiet neighborhood in St. Louis as since the enforcement of the Sunday law. And I know of many a workingman, who seldom visited a saloon on a Sunday, who spends his money now in those readily organized clubs just for the fun of circumventing the law. There they drink to excess because the beer barrel or the whisky jug must be emptied at a certain time, under the fear of police interference. They were formerly satisfied with a glass or two of beer or wine at the saloon or with that little amount they brought home for the whole family. It has been represented that a convenient or subservient police record showed that crimes were lessened through the enforcement of the Sunday law. They indicated a smaller Monday docket, but they did not explain why the docket on Tuesdays was so much larger. And the statistics of our hospitals show an increase of cases of alcoholism by 100 per cent and more. People will get a bottle of whisky more easily than a can of beer. Yet this is only the result of the closed Sunday. We see the glaring effects of prohibition in the conditions that prevail in the prohibition States and in the disgusting results that followed the abolition of the canteen.

All men worthy of the name of men revolt at an attempt to regulate their moral conduct by law, and where it is attempted they will break the laws or evade them through means which are unworthy and often childish. Those well-meaning extremists—the prohibitionists—can not change human nature; and if they had studied the art and science of pedagogy they would understand that plain interdiction is as useless as it is unwise. Make a child understand, place the weight of its own responsibility on its young shoulders, and you will have better results than by interdiction. The same principle goes from childhood through manhood and womanhood. You can not form a strong character if you do not show the boy or girl where strength is needed in the emergencies of life. You can not expect to stamp out crime by removing all possibilities of crime as you might take a plaything out of a child's hand. Laws endeavor to define right and wrong. They punish transgressions. But it is not law, it is education, which reduces crime. The mailed hand rules slaves. Coercion can not enforce morality. Only education can do it. And only experience can strengthen our conception of the differences between right and wrong. For what is right or wrong in one instance is not so always. What is good or bad for one person in one single case must not be the standard for all in every case.

Our antagonists see the bad effects strong drinks have on some weak characters and they conclude that they must be bad for everyone. They know that overindulgence in drink has destroyed the happiness of family life in some cases, and they reason that to partake of beer and wine at any family table must necessarily produce the same effect. With the unreason of a stampeded herd they run and do not look right or left, as soon as they hear the word liquor, and yet they accustom themselves very readily to social practices to which moderate drinking can not compare for evil effects.

Do not attempt in these days of progress to regulate the habits of men through laws. You might as well return to the old sumptuary laws prescribing the row of buttons on our coats or the form of our shoes. Instead of trying to educate the criminal you should return to the cure of the whipping-post or the scold's pillory.

But all this, gentlemen, has been repeated to you over and over. I need not dwell on it any longer. Nor need I, a woman, remind you of the financial side of the question nor of the lack of wisdom in making laws which will not be kept even by the Government itself, or of the wrong-doing in attacking, through administrative measures, rights guaranteed by the Constitution that was made possible only through these same rights, or of the inevitable corruption of the magistrates and officers by bribery in the prohibition States and the flagrant contradiction of having licenses issued there by the Federal Government.

I am sent here to plead before your honorable body against all laws that will advance prohibition, by thousands of women who protest against the assertions of the Women's Christian Temperance Union. We will not be ruled by a minority of women, who regard these questions from a very narrow viewpoint, as, for instance, is illustrated by such queer remarks as uttered lately at a women's convention in Detroit, that prohibition would put a sudden stop to the much-ventilated practice of race suicide.

The suggestion of the learned lady throws a disagreeable light on the habits of many families which the prohibitionists generally claim as their followers, and the children in those grow up strong and healthy, despite, or perhaps because, the mother while nursing the infant gathers strength through moderately partaking of good malted beer instead of weak teas and patent medicines, which, as is known, contain more alcohol than ordinary whisky and are taken by the tumblerful, while partaking of beer or other light drinks in moderate quantities has surely not produced race suicide among our German population.

The members of the W. C. T. U. may mean well, but their work and influence is not always to the benefit of those whom they would protect. During the discussions about the military canteen at the convention of military surgeons a well-known physician made the remark that no steps taken would be of any effect if they did not have the president of the W. C. T. U. on their side. This is surely very complimentary, even if meant as a joke.

If an organization of women may be deemed so powerful that even experts of the Government must despair of having sound laws made against their pleasure, then, indeed, we other women have a right—nay, a duty—to step forth in the interest of good sense, liberty of the family, and the right to enjoy life after our own modest and decent ideas. The pleading of women finds its greatest help in the natural politeness of men, and chivalrous men only too often act against the clear and plain interest of the people at large by civility to the importuning of such women, who claim politeness as a privilege superseding right. But complying with their wishes, gentlemen, would be slighting ours.

We are for true temperance as heartily as they are. Therefore we are against prohibition which will not lessen intemperance but increase it by furthering that most contemptible of vices, hypocrisy,

causing people to do secretly that which through law they are forced to condemn. We women have not the privilege of voting, but we claim the right to be heard when our family life is concerned. We give to the State our best resources—our children. And we claim the right to so educate them that they become true citizens and liberal-minded men and women. Therefore we protest against the making of laws which are in direct opposition to a wise education, to the happiness of our home life, and to true temperance.

Therefore we protest against the wide-spreading moral evil—prohibition!

Mr. ALEXANDER. Madam, you spoke of the police-court calendar being larger on Tuesday morning than on Monday morning, now that the Sunday-closing law in St. Louis is enforced?

Mrs. RICHTER. Yes, sir.

Mr. ALEXANDER. Why is that?

Mrs. RICHTER. They are held for the chief on Mondays and put on the outside docket, so that they lessen the Monday docket, and they can say: "On the Monday docket! We do not have so many prisoners on Sunday."

Mr. ALEXANDER. Then it is a trick?

Mrs. RICHTER. Yes, sir; it is a plain trick. [Laughter.]

STATEMENT OF DR. VICTOR LESER, OF PHILADELPHIA, PA.

Mr. LESER. Mr. Chairman and gentlemen of the committee, the National German-American Alliance consists of 1,500,000 voters. I am one of them, and I am a physician.

Alcohol is not only a stimulant to the forces of life, but also a food, and is used as such in prolonged fevers, tiding the patient over the crisis of the disease.

The procuring of good liquor often means life or death to the sick and to the convalescents.

The proposed act will stimulate the pernicious traffic in patent medicines which are mostly fusel oil and alcoholic solutions, with more or less harmful additions.

Furthermore, this act commits the United States Government to the policy of prohibition and holds up our country, which we love and esteem, to the ridicule of the rest of the world, as all who have traveled abroad can bear witness.

All excesses are vicious and dangerous. Prohibition is just as much an excess in the one direction as drunkenness is in the other direction. This bill, if it becomes a law, puts a premium on vice, as it makes it profitable to smuggle and gives new life to the moonshine industry.

Good laws are cheerfully obeyed. This would be a bad one.

STATEMENT OF J. B. MAYER, ESQ., OF PHILADELPHIA, PA.

Mr. MAYER. Mr. Chairman and gentlemen of the committee, I am the secretary of the German Society of Pennsylvania, the oldest charitable society in the United States, which was founded in 1764, so that, you see, it is older than the United States. Our membership is about 1,200, but among them are about a dozen societies, each of them again with a membership of about 1,000, so that I can say that I

represent about 10,000 voters, only 10,000 I may say; because I know some people claim that they represent 20,000,000 people, and most likely 19,500,000 of them are ladies and children. The only way to arrive at the truth of any subject is to be in that state of mind that allows one to look calmly and clearly at every side of the matter.

It has been contended by gentlemen on the prohibition side that this Hepburn bill does not interfere with the right of a citizen to receive shipments of liquor at his home, but do those gentlemen not see that with the right of a citizen to receive shipment is closely interwoven the right of the citizen of any other State to ship the package to him? This is but logical. In my opinion the Hepburn bill is nothing less than an attempt to delegate to a State the power to regulate and control an interstate shipment which has been by the Constitution of the United States placed as a sacred trust in the jurisdiction of Congress; and it is the sacred duty of the Congress to safeguard the rights of the citizens of the different States in relation to interstate commerce, and not be a party to a scheme which seeks to destroy the individual right of any citizen of any State in the Union.

This Hepburn bill would not only bring discord into the peace and harmony of the States and would stir up bitterness and unpleasant feeling among the people; it would not only mean a loss of many millions to the brewing interest and to the farmers, but it would also line the boundary of every temperance State with sneaks and smugglers, and as whisky can be more easily smuggled than beer, it would do the cause of true temperance far more harm than good. And we can not believe Congress is ready to pass any bill which is nothing less than a prohibition measure. You can not get away from that, neither would the Prohibitionists work as hard for its passage if it was only to regulate interstate commerce. The Union Signal, the organ of the Woman's Christian Temperance Union, shows its true character by saying (1904):

"The Hepburn bill is considered by our friends in Congress as important as any temperance legislation that has come before them during the last decade. It will be a battle royal, as 'our friends, the enemy,' will bring every power available to prevent its passage. We have changed the atmosphere in many a battle by our ceaseless presentations of petitions, and we shall have to again call upon you for a long pull, a strong pull, and a pull altogether. Petition blanks will be prepared at once, and, with accompanying directions, will be forwarded to State officers for distribution through the States."

I am a temperate man and I believe in temperance, and if a man knows that he has not control enough over his will to stop drinking when he has enough then he had better stay away from drinking altogether. But that the same man should say: "You shall not drink because I don't drink." That is ridiculous. I do not smoke, but while I do not smoke I do not interfere with my neighbor, who likes his cigar or pipe, although, I assure you, it is sometimes very offensive to me to inhale the smoke of a weed of a very doubtful character which a man blows into my face. But I believe in personal liberty, and this personal liberty is guaranteed to us by the Constitution of our great country and must be respected as long as it does not interfere with the liberty of our fellow-citizen.

Gentlemen, it is not the right thing—and my friends, the enemies of liberty, may take notice of this—it is not the right thing to prohibit the drinking of intoxicating liquors if you wish to make a man temperate. No; you must educate a man how to drink. And here I could not recommend anything better than the German way of drinking and enjoyment of life. It is in the interest of mothers and wives to share the diversions of men. Long experience has proved that wherever families jointly frequent public places the moral qualities have been highest and the greatest happiness has prevailed. A man should not go where his wife can not go with him; the presence of wives refines the men and restrains them from excesses, but our liquor laws compel a man to go alone. I am with heart and soul for true temperance, but I am in the same measure against prohibition. To prohibit things for a man who knows what to do and what not to do is wrong. That is for children who have not the sense to tell the right from the wrong, and you will also remember, perhaps, from your own experiences, that forbidden fruit only arouses temptation.

The good Lord created the things, and among them hops and malt, for the use of men, and Christ himself drank wine, which should prove to us that it is not wrong to take intoxicating drinks. It is not the use of the thing, no matter what it is, but the abuse, which is damnable in every instance; and abuse, excess in all things, must be avoided, also in legislation.

Do some of my friends from the other side, who make prohibition a source of income, criticise or perhaps condemn the Lord Christ because he drank wine? I know they do not follow in his footsteps, or they could not conscientiously accept salaries, high salaries, for their services, but would divide the money they receive with their importunate poor and starving brethren, as the religion they preach asks of them.

And to the professional lady prohibition agitators I would say: Attend to your duties as mothers, which should be the highest ambition of any woman—that is, raise your children in the right way; teach them the advantages and virtues of true temperance in all things, and they will bless you when they have grown up, and your heart will be at peace when the Lord calls you; but if you entice women away from their homes, from their duties as wives and mothers, to attend to numerous meetings, the curse of the men whose homes you have ruined will follow you. We have at present here in this city a so-called divorce congress to find ways and means to protect the homes. What causes the numerous divorces in this country? Why, the women instead of attending to household duties, instead of making it comfortable and pleasant for their husbands when they return home from work, attend temperance lectures, agitations, etc., and neglect their homes where they could be happy. If they would properly attend to their domestic duties we would have more happy homes, less dissatisfaction, and fewer divorces.

Prohibition is a form of tyranny, a restriction of the free will. Should a highly civilized nation, that fights all forms of tyranny, return to this mistake itself? And prohibition breeds one of the most contemptible of vices—hypocrisy, enticing men to secretly do that which they openly condemn. The prohibition laws not only deprive the man and husband of enjoying a glass of beer at home

within the circle of his family, but it also tends to estrange husbands and sons from their homes, entices them to places hidden from the eyes of the public and the law, and makes sneaks of them. Prohibition tends to destroy family life and happiness, deprives men—and women as well—of their individual right to eat and drink what they like, leads to secret vices and allures husbands from their wives and homes. If people did not want the liquor, they would not order and buy it. If you pass a law like the Hepburn bill, you will create law breakers, and if people get accustomed to break the law in certain instances, they will lose the respect for the dignity of the law, and break it easily in other cases.

STATEMENT OF CONRAD WITT, OF NEW YORK

Mr. WITT. Mr. Chairman and gentlemen of the committee, I will not entertain you very long, as there has been so much spoken about this question that there is not much more for me to say.

I have been sent here from a body of men consisting of about 150,000 good American citizens. They have sent me here to hand in a protest against this bill. I do not see how anybody can go to work and dictate to anybody else what he shall eat and drink. I, Mr. Chairman and gentlemen, can tell you from an experience which I had myself where I drank these liquors, at least some of them, that they are actually a food for a great many people. I had, for instance, sickness in my own family, and the doctor told me there was nothing else that would help the sick person but to get a good bottle of champagne and give the person half a tablespoonful every hour, and the person got well.

Mr. CLAYTON. That doctor must have been a homeopathist, was he not? [Laughter.]

Mr. WITT. No, sir; he was not. [Laughter.] The person got over that sickness, and if he had not got that he might not have been over his sickness.

I can tell you another incident which I witnessed. I have seen the case of a fire where there was a woman carried out unconscious, and the first thing they ran for was a glass of brandy to bring her to again. And I think if they had not had that the woman might not have got over it.

I have another instance, gentlemen. I can tell you in my younger days my wife and I had small children. My wife nursed them, and by nursing them she felt so sick that the doctor gave her the order to drink every day a glass or two of good porter, and I thank the Lord my wife is well and healthy to-day.

I do not see why we should go to work and dictate to anybody what they should eat and drink. Let those people that do not feel inclined to drink anything do without it. Let them drink a glass of water. I do not object to it. I drink it myself, not only once a day, but a few of them every day, but I think if anybody feels inclined to drink a glass of wine or beer and thinks it is good for his health he should be permitted to do so. I would like to see some of our temperance women, if they should meet with an accident, as I have stated before, in a fire, and they should be carried out of a house unconscious and anybody should hand them a glass of champagne

or a small glass of brandy, whether they would shake their heads and say, "No; I can not take it. I would sooner die." I think they would grab it with both hands for the chance of living a few years longer.

No, gentlemen, I do not see the use of all this. There have been many arguments, and there will be others, probably, for a few days longer, and I do not see the use of taking the time of our Congressmen away from other matters on a bill like this, which never can be passed. Therefore, gentlemen, I think the quickest way we can do away with it the better it is for all of us. I thank you, gentlemen.

STATEMENT OF OSCAR FROTSCHER, OF PHILADELPHIA.

Mr. FROTSCHER. Mr. Chairman and gentlemen of the committee, I will not prolong your agony in listening to more or less interesting arguments very much. The legal and constitutional aspect of this bill has been exhaustively gone over, and I will not touch that phase of the question. A great mass of details have been brought before you, and I will not add to them. I shall merely attempt to give a few observations concerning the general principles and touching only on salient features and main outlines.

Coming before you as a representative of the German element of the population, I desire at the outset to disclaim any intention to advocate that the preponderating attitude of that element, which is well known, should have any weight in determining the issue unless, indeed, it coincide broadly with the paramount considerations for the general welfare.

I believe no group of citizens, whatever their bonds, not even the large group that is allied by the ties of the prevailing religion, should claim or should be accorded any special or exclusive consideration in this matter; for any solution arrived at from narrow or partial points of view can, in the nature of things, be but temporary, and is certain to come up for consideration later on.

I conceive that it is necessary to view this matter from a comprehensive point of view, embracing in it certain points, namely, a true conception of the fundamental characteristics of universal human nature, stripped of race or creed bias. Further, the proper consideration of the spirit of republican institutions and the proper regard for past experience.

Concisely stated, the issue here is as follows: Effective total prohibition is aimed at by the advocates of this bill. There is very little doubt about that. A reasonable license is demanded by the opponents of the bill. The issue, therefore, hinges on the question as to which of these two solutions would redound to the greatest benefit of the general weal in its totality.

The first two guiding principles which I hold should govern in leading toward an adequate solution of this issue, namely, true appreciation of human nature, stripped of incidentals, and the due consideration of republican institutions, almost coincide in the elements which they present for consideration; for it is an axiom that the republican form is the highest form of Government, mainly because it accords most closely with the fundamental desires and legitimate aspirations of the human being, in that it permits the greatest latitude

of individual self-determination, consistent with the orderly and progressive development of the whole.

The doctrine of *laissez faire* is the corner stone of democratic institutions in contradistinction to paternalism, that of autocratic forms. From these two points of view, in a republican form of government, a law which aims to restrict the rights of the citizen by regulating his individual daily existence is an anomaly.

Its effect here would be to coerce about ninety-nine one-hundredths of the normally constituted members of the population into depriving themselves of an element of legitimate gratification in their daily lives for the purpose of attempting to uplift the one-hundredth of their brethren who are deficiently endowed, and that without any guaranty of being successful in the attempt.

I hold that much greater stress of circumstances or conditions is required to justify a law of such pronounced paternalism with any hope of its becoming effective.

Concerning the third guiding principle, that of past experience, I submit that if it tended to prove that total prohibition would effect, as the advocates of this bill fondly hope, the redemption of about 1,000,000 deficiently endowed men and women from the slough of degeneracy and misery that fact would constitute a strong reason for advocating the passage of this bill, and, in a great measure, would justify the demand that seventy-nine other millions of normally endowed people be deprived of the, to them, legitimate and innocuous indulgence for reasons of charity and general humanity. Unfortunately, in the light of past experience, the most sanguine of the advocates of this bill can not hope that any such result would be brought about.

I maintain that the evil resulting from the excessive use of alcoholic drink and its concomitant misery can and will be eliminated in the constantly operative process of the evolution of the human race, and that a drastic measure of governmental proscription of the fundamental right of individual self-determination—and that is what prohibition means—would prove ill-advised and futile. I thank you.

STATEMENT OF FRITZ HENZLER, ESQ., OF NEW YORK CITY, N. Y.

Mr. HENZLER. Mr. Chairman and members of the committee, you will kindly excuse me if I do not use the proper expressions that it is the custom to use here. Of course I am a man of the sword and not of the tongue. I am an old soldier, and can only say what I believe and what I think.

I, as the delegate of the German soldiers and riflemen of New York, protest against all encroachments of personal liberty, no matter from whom they proceed. We believe that each and every man should have the right to do what he thinks is good; and we do not believe that the National Congress should make a law to prevent the use of alcoholic beverages. Just as well could they make a law against the use of candy, because we think that candy is a cause of great distress to the people. Candy makes dyspepsia. Alcohol, used in a moderate way, does not. Candy does. Candy spoils the lives of the children, because they are dyspeptic before they arrive at an age to be useful to the community. They are already ill. My doctor says: "Forbid

your children to use candy." I do not give my children any candy, and I will not permit them to use it. I do not give them any liquor either. Still, I will not have any objection if they drink a glass of beer occasionally.

If Congress should pass a prohibition bill in a temperance State to fulfill its own ideas, it would without doubt be an encroachment of the personal liberty, and everything that is an encroachment will bring the people to commit crimes. For an illustration, you will please permit me to tell you what I saw last summer in Europe. I traveled through France, Belgium, Holland, and Germany, and a part of Austria. I saw in Frankfort-on-the-Main—I do not know the English name of the place—250,000 people in what they call the Frankfort City Park, where they were at liberty to drink all they pleased, and in all those 250,000 people I did not see one man or woman drunk. I traveled all over Europe last summer, and I did not see as many as ten or fifteen people drunk. In Maine, where they do not give out any licenses, I have seen people drunk on Sundays and on work days. Where did they get it? They got it in places where it was forbidden to get it. Give the people the liberty they want and they do not want it; and we, the German soldiers and sharpshooters of New York, protest against all encroachments of liberty, and we therefore beg you not to pass this bill.

In regard to the bill of Mr. Williams, I have this to say: He says that there shall not be any liquor brought to any temperance State C. O. D. in original packages. Suppose a man sends his money over to a factory or to a salesman in Chicago, and those goods arrive at his city or in his town and the bottle or jug is broken. I do not believe, if it is only an accident, that the manufacturer will give him another jug of whisky or another bottle of wine or anything of that kind. I think he will have litigation, and he is liable to be out of his money; and for that reason I am against this bill, too. We Germans are against any encroachment, it makes no difference what it is; and we beg you not to pass this bill.

Thank you for the kind hearing you have afforded me.

STATEMENT OF ADOLPH TIMM, ESQ.

Mr. TIMM. Mr. Chairman and gentlemen of the committee, I had the pleasure of submitting my views on the Hepburn-Dolliver bill at the last hearing. I only beg to add that we have received a great number of letters from different parts of the country in which the writers state that not only are they against the passage of the Hepburn-Dolliver bill, but, as far as they know, so are the great majority of the people of the States and of the cities in which they live. Furthermore, we have received from our western branches letters and dispatches in which they say that the time has been too short to make up delegations for this hearing, and for that reason they ask this honorable committee for another hearing and perhaps a little more time to make arrangements for sending delegations.

Mr. HEXAMER. That is all; thank you, Mr. Chairman. For the reason that our western people would like to be heard on this question, Mr. Chairman, I again beg that the committee will extend to us the courtesy of being heard a month from now, when we can have our people here.

(The committee thereupon adjourned.)

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., March 6, 1906.

The committee met this day at 10 o'clock a. m., Hon. John J. Jenkins in the chair.

The CHAIRMAN. Are you ready, gentlemen, to proceed this morning?

Rev. S. E. NICHOLSON. Mr. Chairman, by an arrangement with the other side, the understanding is that the other side shall be heard first for a little while.

The CHAIRMAN. That is agreeable to you?

Mr. CHARLES J. HEXAMER, of Philadelphia, Pa., president National German-American Alliance. Yes, sir.

The CHAIRMAN. How much time will you gentlemen take?

Mr. HEXAMER. If you gentlemen will allow us, we will throw ourselves entirely upon the courtesy of the other side.

Mr. NICHOLSON. I think a half hour or three-quarters of an hour is enough for each side.

Mr. HEXAMER. Very well. Now, Mr. Chairman, I take pleasure in introducing first the Rev. C. A. Voss, of Pittsburg.

STATEMENT OF REV. CARL AUGUST VOSS, PASTOR OF THE GERMAN EVANGELICAL PROTESTANT CHURCH, PITTSBURG, PA.

Mr. Voss. Mr. Chairman and gentlemen of the committee, permit me to preface my remarks by stating that I personally do not use any intoxicating liquors in any form, so that my appearance before this committee in opposition to this bill may not be construed as having even the slightest of personal motives.

I appear before you to-day as the pastor of the oldest religious society in the Allegheny Valley, oldest without regard to nationality or denomination, a congregation which has always taken a decided position in the interest of liberty in every department of life, battling for freedom of thought, conscience, and action, contending that only thus can the true character of man be elevated and strengthened. Thus in my official capacity I stand here as a champion of personal liberty.

But primarily I present this argument to you to-day as the representative of the German-American National Alliance of Western Pennsylvania, an organization comprising more than 150 separate societies, having a joint membership exceeding 23,000 citizens. These German-Americans have come from a land where freedom dwells in the hearts of men, but dares not always express itself in words and deeds. Hoping to find an abode of freedom where the craving of their hearts could be satisfied and the yearning of their souls be stilled, they came to this country, and here have proved themselves the staunchest supporters of our country's institutions, the most devoted to its ideals, and the most jealous of its privileges.

From the very inception of our national existence these German-Americans have formed the backbone of our nation. Since Steuben and his associates gave wise counsel to the immortal Washington up to the present era, wherever questions of vital importance to the life, welfare, integrity, and progress of the nation were at issue the

German-Americans have always been found on the side that labored for a better and a higher life. With such a proud record as our heritage we hold that our position entitles us to a consideration of our opinions on this important issue and thank the members of this committee for this opportunity of presenting our arguments.

It is not the judicial side of this question that concerns us to-day, for this is not within our province. To-day we desire to direct your attention to the relation which the import of this bill bears to the great privilege prized by us as German-Americans—the divine gift of personal liberty. We wish to impress upon you that a large quota of good, respectable, law-abiding, yea, Christian men and women, spread over this broad land, are most bitterly and most emphatically opposed to the enactment of such laws as this one—that would accomplish nothing, but further the demoralizing advance of prohibitory endeavors.

We German-Americans see in this legislation now presented for consideration an attack upon republican institutions and a menace to the welfare of the nation at large. We have a higher ideal than that which is represented by the desire for a glass of beer or a schoppen of wine. In a spirit of true sacrifice we are devoted to the preservation of that which makes our nation great, and therefore we protest against the enactment of any law which would, like this measure threatens to do, have in its wake an increase of the nefarious practice of smuggling, invite lawlessness, produce hypocrisy, militate against true temperance, and undermine civic virtue.

It is a notorious fact that wherever strict Sunday laws have been enforced and the common people deprived of their opportunity to enjoy lawfully on this one day of freedom from toil the social intercourse induced by the companionship over the glass of beer, "speakeasies" and other demoralizing games have been opened, and instead of consuming their beverages in a lawful manner and possibly in company of their families and thus promoting true temperance, these common people in their effort to secure that which they consider their rightful privilege are compelled to repair to the dens where the greatest intemperance is fostered and the accompanying vices nurtured. Wherever prohibition laws have been enacted and enforced honest people have become dishonest and temperate people intemperate, for the usual and the most natural result has been the illegal procuring not of malt beverages—which would be more dangerous of detection, on account of their bulk—but rather of strong alcoholic liquors, the constant use of which is followed by disaster, desolation, and often death.

Intemperance has always been a curse, and no nation recognizes this fact more clearly and condemns the intemperate more sternly than the nation to which not I, for I was born under the Stars and Stripes, but which my forefathers belonged. An intoxicated man is seldom seen on the streets of Germany, and he who practices intemperance is denounced and shunned by his fellow-man. Our devotion to the cause of true temperance and to all that furthers and secures the sanctity and purity of the heart and promotes the law and order in the State has become proverbial.

We are contending for the preservation of the divine right of personal liberty. In this country, over which the banner of freedom floats, the home ought always to be revered as hallowed ground and

the highways leading to that home as the nation's unassailable property. No matter how extensive the power delegated to the police department of any State within our borders, guardianship ought never to be exercised over the sane and intelligent citizens nor control be given over the private and domestic actions of those whose forefathers sought this land of freedom. As free and sovereign people we hold as unassailable our right to regulate our lives and our homes as we see fit so long as in so doing we do not conflict with the welfare of our fellow-men.

Because one person loses control over himself by becoming intoxicated is no justifiable reason for denying the use of spirituous liquors to such as know how to use them rationally. Abuse on the part of one never provides a cause for the condemnation of millions of innocents. Because in this conglomerate nation the representatives of one national extraction are unable to curb their appetites and to control their passions can not reconcile the innocent sufferers to the apparent necessity of the punishment of all. On the same principle we could argue, because money has been the cause of crime, as evidenced in a marked degree in the recent disclosures in the circle of high finance, therefore abolish the use of money. Let us rather seek to educate men of stamina, able to control themselves, not weaklings, who must be tied to mother's apron strings or soothed even in the days of supposed manhood and independence by infantile food.

Prohibition laws have called forth the ridicule of the nations which, though controlled by monarchical powers, would hesitate to arouse the ire of their subjects by thus attempting to deprive them of their privileges and humiliating them before the world. Legislation against the unrestrained use of opium, cocaine, and other drugs is justifiable and commendable, because these are poisons, but until you can prove to the satisfaction of intelligent, fair-minded, and unbiased men that beer, wine, and other mild spirituous beverages are poisonous in their effects when used rationally it would be an injustice to accede to the demands of a fanatical, narrow-gauged, and narrow-minded minority, which fails to appreciate the joys of life.

We are clamoring for a principle which is dear to our hearts. The issue at hand is sufficiently important to arouse our indignation and decided opposition, even though it appears to some to be a mere bagatelle, for we look beneath the surface and recognize there an attempt to establish a precedent which would justify the enactment of such laws which would soon make freedom a sweet dream of the past. Our forefathers as well as ourselves have fought for religious, political, and personal freedom and have always been proud of the progress that we have achieved. To-day we appeal to you not to take a step backward by depriving your fellow-men of their private pleasures and their domestic joys, thus denying to the citizens of this nation the use of alcoholic beverages at their home table, the last place in the world where intemperance is fostered.

This measure is demoralizing, degrading, and humiliating, and its enforcement would surely frustrate the intentions of its supporters and produce what they least suspect, the terrible and deplorable conditions of hypocrisy, dishonesty, and immorality. It is an insult to the good judgment of sane and intelligent people and an attack upon the manhood of the citizens of this great and glorious Republic.

We hope that the gentlemen of this committee will be true to the

trust reposed in them and that the full light of reason shine upon their pathway, so that they may see the error of this measure and the serious dangers lurking among its results.

Mr. HEXAMER. Now, Mr. Chairman, I would like to introduce Mr. William Vocke, of Chicago, Ill.

**STATEMENT OF MR. WILLIAM VOCKE, ATTORNEY AT LAW,
CHICAGO, ILL.**

Mr. VOCKE. Mr. Chairman and gentlemen of the committee, I represent the Chicago branch of the German-American Alliance. Our objects are to cultivate the German language, the knowledge of which, the best scholars of America agree, is essential to the pursuit of all science. We believe that a sound mind can only be trained in a well-developed and healthy body, and we stand for those principles of personal liberty which have been the pride of the Teutonic race, of which the Anglo-Saxon is only a branch, ever since the dawn of modern civilization.

Otherwise I may truthfully say of myself what the gentleman who preceded me gave us to understand as to his position: I have no connection with a brewery or a distillery. I hold no mandate from a brewer or a distiller. I own no stock in a brewery or a distillery, and I have no retainer from the other side. I assert, therefore, that I am not interested and not related either by consanguinity or marriage to any one of the two parties to this controversy, but am here solely to represent the views of a modest American citizen without fear or bias, and as Abraham Lincoln said in his famous letter to Horace Greeley, that he wished all men to be free, so do I wish all men to be sober.

I want to preface my remarks on this subject by assuring you learned gentlemen of the Judiciary Committee that I have no intention to presume that I know more than you, or as much as you, about the constitutionality of this question. But permit me to remark that as I read this law yesterday—this proposed bill, I mean—it struck me that it contemplated something which can not be permitted under the Federal Constitution, because the Constitution says that Congress shall regulate the interstate commerce.

What is interstate commerce? Is it complete when you interrupt the shipment of an article of interstate commerce before it is delivered to the consignee? At the time it reaches the boundary of the State has Congress the right to allow it to be stopped in transition and to render the delivery imperfect?

As regards an article the shipment of which is not entirely prohibited as generally deleterious, the interstate commerce can not be crippled in that way to the injury of the parties concerned, because it is not interstate commerce until the goods in question pass from one State into the other unhindered, i. e., from the consignor into the hands of the consignee. If the goods shipped from Illinois, intended for a consignee in Iowa, can be seized by the police authorities of Iowa right at the boundary of the State, as it is contemplated by this bill, where is the interstate character of the shipment? But be that as it may, you gentlemen can grapple with all these questions very much better than I, and I understand there have been discus-

sions before this learned body before in which that element has been thoroughly exhausted. I am therefore requested by the officers of the German-American Alliance to concern myself with the ethical side of this question rather than with the other.

Now, gentlemen, I maintain with Pastor Voss that this proposed legislation is vicious in the extreme. I believe I can illustrate this subject by giving you a few examples from my own experience, relating to the character of the very laws which this bill is designed to aid. It was about eighteen years ago, when I had to try a case in the circuit court at Iowa City, Iowa. It was a hot July day. I had exercised myself in my argument to the court and the jury for several hours and had become weary and thirsty. I want to be perfectly honest with you. I am 67 years of age. I have used beer and light wine to a moderate extent ever since I arrived at the age of manhood, and I have always, for forty years past, been considered a very excellent risk in the life insurance companies of this country, particularly in the Connecticut Mutual, the best in the world. The outcry against the moderate use of beer is unreasonable. The great German chemist, Liebig, calls beer liquid bread, and as to its health and strengthening qualities the equally great French scientist, Pasteur, fully agrees with him. But to return to my experience in Iowa City.

I had become quite exhausted in my efforts before the court, and I felt that I needed just one glass of beer. I said to my friend, a young lawyer who sat by my side, and with whom I had maintained quite a correspondence in the case, that I would like him to take me to some place where I could get some refreshment in the shape of a glass of beer. He said, "Oh, yes; that is all right. Let us go down the street." I had heard that Iowa had passed some very restrictive temperance measures, but I was entirely unfamiliar with the character of the legislation that had been enacted. So we walked down a few blocks and stopped in front of a store, the windows of which were covered with shutters.

My friend rapped at the door, which was locked on the inside, and it was opened by some one within. We entered and I expressed my desire to the host. He pointed me to a sign suspended from the center of the ceiling, and I read upon it these words: "No liquors sold except for sacerdotal, medicinal, or culinary purposes." I said to the host, "I do not want a glass of beer for sacerdotal purposes, because I am not a minister of the Gospel nor a hypocrite; I do not want it for medicinal purposes, because I am neither a doctor nor am I sick, and I do not want the beer for culinary purposes, because I am not a cook; but I am quite thirsty. Will you give me a glass of beer?" With that the host gave my friend a significant look, and we walked into the back room, and there the host brought out a bottle of Milwaukee beer with two tin cups and a corkscrew, and we sat down and each of us emptied a cup of that beer.

I say to you, gentlemen of this committee, and to you, ladies and gentlemen, who all, like myself, want to do the very best for the cause of temperance, that this incident was to me a source of deep humiliation, because I had then for the first time in my life willfully violated a law of a great State of this Union. I expressed my sentiments to my friend, who was in other respects a law-abiding and honorable citizen of the town. I said to him that I felt cheap and

mean for what I had done. But he answered with utter indifference, "Oh, that is nothing; that is done here every day. We are forced to do it; we are forced to break the law every day."

Is that wise legislation? I ask you, gentlemen, in all candor, is it proper that the great Government of the United States of America should lend its hand to the enforcement of such legislation? Have we not more important things to do than that? Are you gentlemen of this committee not charged with weightier problems than that?

Let me give you another example from my own State of Illinois, where I have lived nearly fifty years. Some years ago, in the fall, I had to try a case before Judge Eppler, in Petersburg, Menard County. When I was through with my labors I had the same desire for a glass of beer. The host told me I could not get it in town, because local option prevailed there, but that if I walked a mile down in a certain direction I would find a little place where I could get all the beer I wanted. It was a beautiful autumnal day, just such a day when you like to be out in the open fields and in the tinted woods, and I walked along, enjoying the air and the scenery.

After having traveled some distance I noticed a little house about half a mile farther away, from which loud noises reached my ear, and as I approached the premises they showed in their whole appearance that they had been improvised for the very purpose to which they were devoted. The house consisted of one small room, containing nothing but a rough counter, with a bulky man behind it, and a barrel of beer and some tin gallon measures at his side. The noise I had heard was created by the boisterous talk of a number of men—twelve or more—back of the house in an inclosure covered by a board fence as high as 6 feet. I asked the host for a glass of beer. He told me the law allowed him to sell beer only by the gallon. "A gallon!" I exclaimed, "Why, my small capacity does not hold one-tenth part of that. I want a glass." He replied, "No; you must pay for a gallon if you want a glass, and you can not drink it on the premises here; you must drink it back there," pointing to the inclosure I have mentioned.

I was curious to see who the people were back there, and so I handed over to the host the price of a gallon of beer. When I reached the yard the filled gallon measure was placed before me with a cup. I had hardly sat down, in order to study the faces of the crowd, when I heard somebody cry out my name, with a friendly halloo, and as I looked around I recognized in this person who called me the sheriff of the county of Menard, who had served processes for me on the day before. I asked him about this most remarkable custom that prevailed in his bailiwick and which, in order to keep a man sober, forced him to buy a gallon of beer, while it denies him a glass, remarking that I felt like saying to its advocates what the old lady out West, in one of the great Emancipator's best anecdotes, said with indignation about her minister whose conduct was not entirely in harmony with his pious professions: "If you represent Christ, then I am done with the Bible." All the sheriff could answer was that the people would not tolerate any beer hall in town, no matter how respectable, and so they were driven to the suburbs, where they had to evade the law by drinking in the back yard, "away from the premises," and buying the beer wholesale.

I took a cup of beer from the gallon measure, leaving the rest to those thirstier than I, and went back to the hotel, where I had to stay over night, because I had not got through with my business, and when at about 8 o'clock in the evening I sat in front of the hotel I saw several of these men coming back from the place where they had been spending a number of hours, passing through the street in a condition very humiliating to any gentleman.

Now, would this be as likely to happen if a respectable place in town, right in the face of the neighbors, and in the fear and shame of the neighborhood, were kept by a respectable person, placed under proper police control, and the whole system under the vigilance of honest and efficient officers?

After all, that is what you well-meaning people on the other side should be laboring for.

Now, if you will go to work to secure temperance by the beneficent influences which should prevail in every home in the land, by the enactment of reasonable laws—not unreasonable measures like this—and by the enforcement of such laws through the agency of honest and efficient officers, you will accomplish all the good that can be accomplished in the direction of your efforts. You will never accomplish it in the way you pursue.

I join all those who know the facts, who have studied them carefully, and in whose candid opinion prohibition can not be enforced. If I remember aright, within a few years before his death the very originator of the Maine liquor law, Neal Dow, confessed that he made a grievous mistake in securing its enactment. Will anybody tell me that prohibition has ever prohibited in Maine? Did it ever prohibit in Massachusetts? Did it ever prohibit anywhere else where it was attempted? It has been a failure everywhere; it has resulted in making people hypocrites and lawbreakers; it has bred contempt for the law. Is there any question but that if you breed in a citizen a feeling that he can break one law with impunity, it is but one step toward the breaking of other laws, laws of more serious import than the temperance laws?

The objects you have in view may be ever so noble. You should be encouraged in all that which is attainable. Enact reasonable laws, but not measures prompted by fanaticism. Teach by moral precepts the blessings of temperance and the curse resulting from excesses to body and soul. Prohibition you will never be able to enforce. The experience of the past must have taught us all that this is an indisputable fact, that the prohibition element in this country is not as strong as it was in former times, but is dying out, and that in the course of the next generation hardly anything will be left of it.

Mr. PALMER. What is this gentleman's name, Mr. Chairman?

The CHAIRMAN. Mr. Vocke.

Mr. PALMER. Then, Mr. Vocke, if you have any objections to this bill, I wish you would state them. I do not think the Prohibitionists need your advice.

Mr. VOCKE. Mr. Chairman, I said at the outset that I had been requested to touch upon the ethical side of this question only. The cloven foot of prohibition is clearly apparent in this bill, and it is, therefore, proper to show whether prohibition should be advocated by this Congress or not. I raise the objection that it should not.

But, besides the constitutional and ethical questions involved in the bill, there is also an economic side to it. If this law is enacted, having for its object, for the accommodation, now, of one or two States, to keep fermented, vinous, and intoxicating liquors out of their boundaries, all the 40 States in the Union can pass temperance measures similar to those prevailing in Maine, Iowa, and Kansas. Of course, to all of them this same bill would apply. The traffic and interstate commerce in liquor would then be at an end, and that very article of interstate commerce which has, ever since the year 1862, yielded hundreds of millions of dollars of internal-revenue taxes to the Federal Government, without which it would probably have been impossible to carry on the war in order to prevent the destruction of our Union, would be extinguished as a subject of taxation. This would be like killing the hen that has laid the golden egg.

True, the pending bill is not intended as a revenue measure; but would it not, in its operation, have the effect of disturbing that very uniformity which is expressly provided by the Federal Constitution in these words: "All duties, imports, and excises shall be uniform throughout the United States?" The levying of such duties, etc., is the first in order and among the most important powers delegated to Congress; and, in the language of the great Webster, the Union under the Constitution "had its very origin in the necessities of disordered finance, prostrate commerce, and a ruined credit."

My time does not permit me to pursue this subject any further and to point out what incalculable injuries the contemplated legislation would cause to our farmers and to almost all other classes of society.

But is it in harmony with the spirit of our Federal Government to enact a measure like the one now before your honorable committee? Let us admit that Iowa and Kansas have the right to pass whatever temperance legislation they please. We do not wish to take them to task for that. It is all a matter of taste, and hence we will cheerfully follow in this matter the clever advice of our great American humorist, Mark Twain, given on his seventieth birthday, to the effect that while the indulgences he followed agreed with him, it was not necessary for anybody else to follow them, because they might not agree with anybody else.

But I want to urge that it is not the part of the Federal Government to pass laws in support of such cranky legislation as that we find in those States, and it seems to me that the pending measure is absolutely out of place in the Congress of the United States. I have always looked upon this glorious Union and its Central Government as I do upon the mild June sun, radiant with light, does not destroy or oppress, but warms and fructifies wherever it sheds its genial rays. None but those who follow certain occupations subject to internal-revenue taxation or Federal control, or a certain class of wrongdoers ever feel the arm of that Government. In the daily walks of life it is hardly ever noticed except when we stamp our letters for mailing or count our greenbacks. That grinding oppression which is sometimes felt as the result of sumptuary laws or of a petty police despotism is not of the nation, but invariably the work of an intolerant crowd ruling in smaller communities.

Our Federal Government is designed to shed beneficences only. I insist, gentlemen of this committee, that that Government is too great and too broad ever to engage in the unworthy work of aiding any

one of the States of this Union in the enforcement of its antiliquor laws or measures of that kind. The State of Iowa claims that the passage of this bill is required in order to enable it to secure a proper exercise of its police powers. If, aside from those extreme cases in which the State may call for aid upon the Federal Government as provided by the Constitution, the State means to exercise any of its inherent powers, it should possess inherent strength enough to assert those powers and not reduce the Federal Government to the humiliating position of a ready handmaid in matters so highly obnoxious to a large and respectable part of its own population.

I have said before that I am not going to argue with you learned gentlemen about the constitutionality of this measure. I maintain, in my humble opinion, that it is unconstitutional. I do not believe it will stand the test of the Federal Supreme Court. But be that as it may, it is improper in every respect, and it is certainly unworthy of a great legislative body like the Congress of the United States.

Gentlemen, I thank you for your attention.

Mr. NICHOLSON. Mr. Chairman, it is now 11 o'clock, and I understood you wished to go on with the hearing until 12 o'clock.

Mr. HEXAMER. Yes.

Mr. NICHOLSON. Then may I proceed, Mr. Chairman?

The CHAIRMAN. Certainly.

**STATEMENT OF REV. S. E. NICHOLSON, OF HARRISBURG, PA.,
SUPERINTENDENT OF PENNSYLVANIA ANTI-SALOON LEAGUE
AND SECRETARY OF THE AMERICAN ANTI-SALOON LEAGUE.**

Mr. NICHOLSON. Mr. Chairman and gentlemen, I would like to say at the outset that I regret exceedingly that Mr. Dinwiddie, whom I think most of you know personally—he is the legislative superintendent of the American Anti-Saloon League—is in bed sick, and is unable to attend this meeting.

As secretary of our American Anti-Saloon League I have been asked to be present to-day, and with your permission I would like to speak on our side of the question. I can not express too strongly my regret that Mr. Dinwiddie is not here, because he has thoroughly covered this entire question in his investigations, and I have no doubt whatever that he would have been able to present some solid arguments upon this side of the question.

Mr. Chairman, if I understand the question rightly as involved in this bill, I do not care to enter into a debate concerning the statements and arguments that have been presented here to-day. It was not my good fortune to hear the discussion some two weeks ago upon this measure, and I do not know what was presented at that time, but if I understand this measure the prohibition question is not involved in it except in the most remote degrees, for may I call your attention to the fact at the outset that this bill does not propose to close a single saloon?

Under this bill, so far as the terms of the bill are concerned, there is no prevention of the shipment of any intoxicating liquor from one State of the Union into another State, and so I shall choose to eliminate from my part of the discussion the entire prohibition question, simply saying this, that I think the arguments and statements that have thus far been presented to the committee to-day would be en-

tirely appropriate in a State campaign to be presented before the people as an argument from the standpoint of those gentlemen why the State should not enact a prohibitory law.

The CHAIRMAN. Will you allow me to ask a question for my own information?

Mr. NICHOLSON. Certainly, sir.

The CHAIRMAN. You say the object of the bill is not to prevent the transportation of liquor from one State into another?

Mr. NICHOLSON. No; I said, so far as this bill is concerned, there is no prevention of the shipment of intoxicating liquor from any State of the Union into another.

Mr. NEVIN. You are talking of the Williams bill?

Mr. NICHOLSON. No; the bill 13655—the Littlefield bill. So far as this bill is concerned it does not by its own provisions prevent the shipment of any liquor from one State into another. And that brings me at once to the principle, as I regard it, which is involved in this measure—the only principle, it seems to me—and that is whether or not the dealing with the liquor question by statute shall be relegated to the States.

I would call your attention—and I am not going to enter into a lengthy argument, Mr. Chairman and gentlemen of the committee—to the fact that for a period of about half a century prior to the year 1888 it seemed to be the general opinion, recognized by the courts and by Congress, that the States had complete jurisdiction of the liquor question. About the year 1888 in a case, I think, that came up from the State of Iowa, the question was again brought before Congress—brought before the Supreme Court, I mean—and by a series of decisions through two or three years there came finally what was known as the original-package decision, by which the Supreme Court seemed to reverse itself. I think I am right in making that statement, because in a prior decision Chief Justice Taney had clearly established the fact that in the absence of any Congressional action the States had complete jurisdiction over the liquor traffic. But in the original-package decision a contrary opinion was rendered to the effect that under the interstate-commerce law, inasmuch as Congress had not relinquished any of its rights by statute, liquors could be shipped in from one State to another State. Not only that, but they could be delivered to the consignee, and the consignee in turn could direct that interstate-commerce shipment into the general traffic of the State the interstate-commerce character of that liquor remaining so long as the original package was not broken.

I think I am right in making that statement. Hence, new conditions arose, and many of the States—a few of them in particular, but many of them in a general way—began to be burdened, as they felt, under that decision. Original-package houses sprang up in the State of Kansas and in the State of Iowa, and in spite of the fact the States had undertaken to prohibit the traffic in intoxicants from these original-package houses these interstate-commerce shipments in unbroken packages began to be distributed promiscuously among the people.

Then you will remember the appeal came to Congress, for in the original-package decision it was hinted very strongly, at least, that Congress would have the power to act. So there was enacted the

Wilson law of 1890, with which you are familiar, undertaking to change the time when the interstate-commerce character of the shipments of the liquor should cease. Prior to that time, as I said, the shipments could be sold by the consignee if sold in unbroken packages. Under the terms of the Wilson Act the point at which the interstate-commerce character should cease was decided to be at the time of delivery to the consignee, or to use the exact words of the statute, "at the time of arrival within the State," which was construed by the court to mean, at the time of delivery to the consignee, that it had not in a legal way arrived within the State until the delivery had been made to the consignee.

The question of the constitutionality of that act was taken to the Supreme Court, and, notwithstanding it has been stated this morning that a measure of this sort is unconstitutional, the court held that the Wilson Act was constitutional.

May I read you just one or two statements from that decision? I have it here, Mr. Chairman. I want to call your attention to this fact first, that in a prior decision, in what is called the case of *Leisy v. Hardin*, the Chief Justice says:

The conclusion follows that as the grant of the power to regulate commerce among the States, so far as one system is required, is exclusive, the States can not exercise that power without the assent of Congress.

Now, the Wilson law was declared by the Supreme Court to be constitutional, and in the decision of the Chief Justice in that case it was stated:

Congress has now spoken and declared that imported liquors or liquids shall, upon arrival in a State, fall within the category of domestic articles of a similar nature. Is the law open to constitutional objection?

Here is what is said on that point:

It does not admit of argument that Congress can neither delegate its own powers nor enlarge those of a State. This being so, it is urged that the act of Congress can not be sustained as a regulation of commerce, because the Constitution, in the matter of interstate commerce, operates *ex proprio vigore* as a restraint upon the power of Congress to so regulate it as to bring any of its subjects within the grasp of the police power of the State. In other words, it is earnestly contended that the Constitution guarantees freedom of commerce among the States in all things, and that not only intoxicating liquors be imported from one State into another without being subject to regulation under the laws of the latter, but that Congress is powerless to obviate that result.

That is the result. Now here is the summing up of it:

No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.

The differences of opinion which have existed in this tribunal in many leading cases upon this subject have arisen not from a denial of the power of Congress when exercised, but upon the question whether the inaction of Congress was in itself equivalent to the affirmative interposition of a bar to the operation of an undisputed power possessed by the States.

And again:

The framers of the Constitution never intended that the legislative power of the nation should find itself incapable of disposing of a subject-matter specifically committed to its charge. The manner of that disposition brought into determination upon this record involves no ground for adjudging the act of Congress inoperative and void.

It seems to me, Mr. Chairman, that the decision of Congress on the Wilson bill has established clearly the right of Congress to deal with this question.

Now, under the Wilson Act other conditions have arisen in many States of the Union that are as intolerable almost, as many people believe, as the condition which grew out of the original-package decision, for it has been shown, I think, in the hearings on this question before this committee here two years ago, and it is in the knowledge of many of the members of this committee, that under these conditions by which liquors can be shipped into a State and delivered to the consignee, gross abuses have grown up under that provision.

It is very often the case that liquors are shipped into a given community not only addressed to persons giving their proper names, but sometimes addressed to Mr. A or Mr. B or Mr. X or Mr. Y, and so on. They are then held in the express offices, and from time to time some one comes in who is willing to pay the C. O. D. charges, and who says: "I am Mr. A" or Mr. B or Mr. X, and so on, and gets the liquor. The express companies' offices, in some instances, becoming storage houses for liquor, which is dispensed throughout the community from time to time, in very many instances contrary to the State law which exists upon this question.

I need not go into detail along that line, but that gives simply a little idea of some of the abuses against which the people have been protesting throughout the country, and which add to the widespread request and desire that Congress take some additional action that will give relief from these present burdens that exist.

I think it is interesting to note this fact in passing, that in reading the debate prior to the enactment of the Wilson law in Congress I find that practically the same arguments were advanced by members on the floor of Congress for the enactment of that law as those that are being advanced to-day for the enactment of this bill; and undoubtedly in the minds of many of the Congressmen, at least, it was intended at that time to cover this entire question by which the control of the liquor traffic should be left entirely to the States. But by what may be the unfortunate language of the bill the word "arrival" was construed by the court as I have suggested, so that the only point now involved in this measure is the willingness of Congress to simply take an additional step, which I believe many of the Congressmen believe they did take when the Wilson Act was enacted, and pass such legislation as will relegate the jurisdiction of this question entirely to the States.

Upon that point, it seems to me, we hardly need any argument. The whole theory of the relationship of the Government to this question from the very beginning has been that idea that a State shall have complete jurisdiction, under its police powers, with reference to that which directly and immediately concerns its own citizens. And we believe Congress is fully justified under the conditions that have grown up under the Wilson law in taking such action as will relegate the whole question back to the jurisdiction of the States, allowing the States to enact such legislation as they may determine will be for the best interests of their own people.

The CHAIRMAN. Have not the States always had the exclusive power to prevent the sale or manufacture of liquor?

Mr. NICHOLSON. So far as the manufacture and sale of liquors are concerned and the sale after it is manufactured in the States, yes; but under that interstate-commerce law and under the Wilson Act and under the decision of the court construing the Wilson Act, the States have not had jurisdiction, because the interstate character of the shipment holds—before the Wilson Act until the original package was broken, and under the Wilson Act that interstate-commerce character holds until the delivery has been made to the consignee; and under that very gross abuses have arisen, as I said.

The question you suggest did apply, as I stated a while ago, to the period of about half a century prior to the year 1888, when it was admitted, seemingly both by Congress and the Supreme Court, that the States had jurisdiction not only of liquors manufactured within the States, but also over those that came from one State to another.

Mr. SMITH, of Kentucky. Your contention, as I understand it, is that the State should be endowed with power to prevent interstate commerce in liquors? That is it, essentially?

Mr. NICHOLSON. Yes, sir; that is what it amounts to; and in doing that I would suggest not that Congress shall be asked to delegate a power to the States which Congress has no power to do, but rather that it shall simply change the character of the interstate article of shipment and say that its interstate-commerce character shall cease when it arrives within the State and before delivery to the consignee.

The CHAIRMAN. Your idea is to do indirectly what the law says shall not be done directly?

Mr. NICHOLSON. I do not know what law you refer to.

The CHAIRMAN. That Congress can not delegate its power to the State—you concede that?

Mr. NICHOLSON. Yes.

The CHAIRMAN. Then how can Congress withhold its protecting power to interstate commerce?

Mr. NICHOLSON. To answer that I simply go back again to the decision on the Wilson Act, which, I think, fully covers your question, because the same questions would arise there. Prior to the enactment of the Wilson Act the interstate-commerce character of the shipment of liquor did not cease until the original package became broken and entered the arena of State commerce.

Mr. STERLING. Does not the decision you read from make the very distinction that exists between the Wilson Act and this bill?

Mr. NICHOLSON. I do not think so. May I call your attention to the fact that before the Wilson law was enacted the court said that the State did not have jurisdiction without the assent of Congress, plainly indicating that it was within the province of Congress to take action? And immediately following that the Wilson bill was enacted, which changed the time when the interstate shipments ceased to be an article of interstate commerce and became a State article of commerce.

Now, then, I do not think there is anything within that decision that at all raises the point that you suggest. The contention that we have is simply this: That Congress, having taken action at one time clearly within its powers, as the Supreme Court has decided, changing the time when the article ceases to be an article of interstate commerce to an earlier time, Congress may take further action

and fix that time at a still earlier period, in order to carry out the policy that we believe should be carried out, of giving the States complete jurisdiction over the sale within their own borders.

Mr. CLAYTON. Where does Congress get the power to enact such legislation? Is it not derived from the interstate-commerce clause of the Constitution?

Mr. NICHOLSON. Yes; from the Constitution, which says that Congress has the power to regulate interstate commerce. That has been clearly shown from the decision.

May I just interject this thought, Mr. Chairman, that having had no word of this hearing definitely until last evening, I am not prepared to cite immediately all the decisions, but having given considerable attention to this matter two years ago, and more or less since that time, I am, in a general way, well acquainted with the idea which we are aiming to get at in this measure. I think that Mr. Clayton has suggested that which is the right foundation to start from.

Mr. PALMER. That has been decided by the Supreme Court in this Rahrer case. I will read you from 140 United States Reports, page 545:

The act of August 8, 1890 (26 Stat., 313, ch. 728), enacting "that all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise," is a valid and constitutional exercise of the legislative power conferred upon Congress; and, after that act took effect, such liquors or liquids introduced into a State or Territory from another State, whether in original packages or otherwise, became subject to the operation of such of its then existing laws as had been properly enacted in the exercise of its police powers, among which was the statute in question as applied to the petitioner's offense.

That shows that Congress has the power to do this thing and has the right to declare that the interstate package shall be subject to the police power when it arrives within the State, so that settles the question as to what the Supreme Court has decided on that point.

Mr. CLAYTON. It had the power to enact such legislation in pursuance of its power to regulate interstate commerce.

Mr. PALMER. Exactly so. There is no question about the power of Congress to do it.

Mr. CLAYTON. I infer, Mr. Nicholson, that you are not a lawyer?

Mr. NICHOLSON. No, sir.

Mr. CLAYTON. I inferred it from the line of your argument.

Mr. NICHOLSON. And yet I think the decisions of the Supreme Court are clearly in line with the idea that Congress can regulate it, if it sees fit to do so, or bring about the entire abolition of any article of commerce by internal regulation. The internal regulation would go to that extent if Congress saw fit to exercise its authority.

Mr. PALMER. I understand that you were here last session when this subject was under discussion before?

Mr. NICHOLSON. Two years ago.

Mr. PALMER. When this committee reported a bill, which was understood to be satisfactory to both sides. In that bill it was provided

that it should not apply to the shipment of liquors to anybody who wanted them for his own use.

Mr. NICHOLSON. Well, Mr. Chairman, I am thankful to Mr. Palmer for bringing that up.

Mr. PALMER. I want to know if that bill would be satisfactory to the temperance people now? I believe it was satisfactory to them in the Fifty-eighth Congress, and it was reported unanimously, I believe, except that Mr. Parker thought some other kind of a bill would be better.

Mr. CLAYTON. Yes; in Report No. 2337, Fifty-eighth Congress, second session.

Mr. NICHOLSON. I may say that immediately after the report of the committee it was my privilege to take up the question with Mr. Dinwiddie and some members of this committee and discuss the question whether or not there was not grave danger involved in that, and second, whether there was any necessity for it. In the second place, I think I can speak for the organization which I represent and for Mr. Dinwiddie, and say that is not satisfactory.

And if you will bear with me a few minutes longer, I want to cover another point. I would like to read you what I prepared on that very point while coming down on the train from Harrisburg this morning. Therefore I will address myself simply to the question that Mr. Palmer has asked.

Mr. BIRDSALL. Does not this Littlefield bill in fact have that provision now? Let me call your attention to the proviso clause in section 1. The bill first provides that the liquor shall be subject to State law immediately upon passing the boundary of the State, and then there is this proviso:

Provided, That shipments of such liquors entirely through a State or Territory and not intended for delivery therein shall not be subject to the provisions of this act, nor shall this act authorize the infringement of the right of common carriers to continuously transport such merchandise from without such State to a station therein.

Mr. NICHOLSON. I do not think that covers the question which Mr. Palmer has asked.

Mr. BIRDSALL. What do you understand that to mean, then?

Mr. NICHOLSON. The first part of that plainly has reference to the shipment. For instance, if a Pennsylvania dealer wanted to ship into Indiana, the Ohio laws could not stop it if it was sent to some one in the State of Indiana. It has reference to the shipment through the State, so that that does not govern the question at all.

Mr. BIRDSALL. I call your attention to it. If it does not mean that, I do not know what it does mean.

Mr. PALMER. That provides that a common carrier can transport the merchandise to the State to which it was sent. It could not be seized until it got to the station to which it was sent. The question I want to have answered is whether they have any objection—whether your people have any objection—to a man getting a case of beer, for example, for his own use? When we had the subject up before there did not seem to be any objection to that, as a right guaranteed to a man by the Constitution—

Mr. SMITH, of Kentucky. And the advocates of that measure at that time denied that that was their purpose and did not want to take it from you.

Mr. PALMER. I want to know what my temperance friends think about it. I confess I belong with them in a measure. I was chairman of a State Prohibition campaign committee at one time in Pennsylvania. I would like to know what our temperance friends think of that provision. I do not want you to understand from what I say, however, that I am a teetotaler. [Laughter.] I believe in prohibition for the other fellow. [Laughter.] But I am not so weak-minded as to fail to see that a man can be a Prohibitionist and yet not be a teetotaler. [Laughter.]

The CHAIRMAN. Let us hear Mr. Nicholson's reasons.

Mr. NICHOLSON. I jotted them down hastily in the train as I came down here.

It will be remembered that at the session of Congress two years ago an amendment was incorporated by this committee in what was then known as the Hepburn-Dolliver bill, embodying this same principle of legislation, exempting from the provisions of the bill liquors shipped from one State into another, intended for personal use. I understand such a proposition has been made or is to be made concerning this measure, and it is against such an amendment that I desire to protest most strongly. I may say, without violating any confidences, I think, that the incorporation of this amendment two years ago was a chief reason why the Anti-Saloon League felt itself debarred from any further effort to try and secure favorable action by Congress on the bill.

Speaking for myself alone, I feel strongly that such an amendment nullifies in large part the purposes of this proposed legislation and opens up endless opportunities in every State for the evasion of the law.

Plainly, as has been stated, the purpose of this bill is by an act of Congress to so change the character of interstate shipments of liquors that they shall lose their identity as articles of interstate commerce at a point earlier than is now provided under the Wilson law; that this shall occur upon entry into a State and before delivery to the consignee, and therefore shall thereafter be subject entirely to State jurisdiction. Such an amendment, as I have referred to, at once limits the scope of the bill, and if enacted into law would at once mean that the States would have jurisdiction over some liquors when shipped from another State, and that they would not have jurisdiction in other cases. To put it more plainly, the State would then have jurisdiction over liquors shipped in for the evident purposes of traffic, but not jurisdiction over those intended for personal use by the consignee.

What is the need of such legislation? Under the Wilson law, as construed by the Supreme Court, liquors may be delivered to the consignee, when they immediately lose their identity as articles of interstate commerce, and the consignee is debarred from disposing of these liquors in violation of State law. For what purpose, then, are liquors now permitted to be shipped in, except for personal use? Congress, by the Wilson Act, destroyed the power to traffic in such liquors in violation of State law; then what is gained in this proposed act if it is to be qualified by such an amendment?

I grant that there is this advantage, that the storage of liquors in express offices, and the delivery to any and all who are willing to

pay the C. O. D. charges, will be broken up, but this will be obviated by the shippers being a little more careful to get the exact names of the consignees, and the storage rooms will be transferred from the express offices to the houses of the shippers themselves. The traffic, which has constituted the necessity for the legislation proposed in this unamended bill, will go on with hardly perceptible decrease, and we will continue to witness the spectacle of wholesalers and manufacturers of another State being permitted to engage in a business in a State and derive profits therefrom which are denied its own citizens.

It is argued, however, that such a provision is necessary, that the right to import liquor for personal use carries with it the right to ship such liquors and can not be abridged by legislation. If that be true, that right exists by virtue of the power of the Constitution or by virtue of an inherent and inalienable right, and not by any force that this proposed amendment can give it. If such right exists, then the only purpose of the amendment, or at least its only effect, would be unnecessarily to advertise the fact that the interstate traffic in liquors may be allowed, amounting to the same thing as a license to carry on such traffic. But is there any such constitutional or inherent right?

Mr. SMITH of Kentucky. Do I understand your proposition to be that although the citizen may have the inherent right to get liquor from without the State for his own personal use, yet his rights are not to be advertised and made known to him—these rights that the people have ought not to be made known to them?

Mr. NICHOLSON. No; this amendment does not add anything to the rights which the citizens have.

Mr. SMITH of Kentucky. And the citizen ought not to be made cognizant of the rights which he has?

Mr. NICHOLSON. No; it will add to the burden—

Mr. CLAYTON. If we do not recognize that constitutional right, may it not imperil the constitutionality of this act? You have read the case of *Vance v. Vandercook*, in 170 United States Reports?

Mr. NICHOLSON. Yes; I was coming to that. In that case there has been claimed to be an inherent right or a constitutional right.

Mr. CLAYTON. Wait; here is the language of Justice White on that matter:

Indeed, the law of the State here under review does not purport to forbid the shipment into the State from other States of intoxicating liquors for the use of a resident, and if it did so it would, upon principle and under the ruling in *Scott v. Donald* (165 U. S., 58, 170), to that extent be in conflict with the Constitution of the United States.

Mr. NICHOLSON. Yes; I was familiar with that, and I covered that in this argument here.

Mr. CLAYTON. If that is the objection, what is the objection to leaving it in the law? If it is true, why not state it?

Mr. SMITH, of Kentucky. The point he just made was that it will not let the people know it.

Mr. PALMER. The point you made a while ago was that a man did not have such a constitutional right.

Mr. NICHOLSON. Of course, if that proposition does not appeal to you I will not go into it further.

It is asserted that this is affirmed in the *Vance v. Vandercook* decision, but I call your attention to the fact that this decision was rendered in the light of the interpretation of the Wilson Act. Certainly under that law it would have been a violation of the Constitution to forbid shipments of liquor intended for personal use, because the interstate-commerce character of the liquor did not cease until delivered to the consignee, and any interference by a State beyond that point would have been in violation of the Constitution, which gave to Congress sole control over such commerce.

Mr. CLAYTON. Would you mind my quoting a little more from *Vance v. Vandercook*, so that you can answer?

Mr. NICHOLSON. No, sir.

Mr. CLAYTON. I read just now a sentence from the opinion by Mr. Justice White. Now I will take it up where I left off [reading]:

It is argued that the foregoing considerations are inapplicable, since the State law now before us, while it recognizes the right of residents of other States to ship liquor into South Carolina for the use of residents therein, attaches to the exercise of that right such restrictions as virtually destroy it. But the right of persons of one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States, and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine this contention—then they are void. If they do not, then there is no lawful ground of complaint on the subject.

And again in the same case it is said:

Conceding, without deciding, the power of the State where it has placed the control of the sale of all liquor within the State in charge of its own officers to provide an inspection of liquors shipped into a State by residents of other States for use by residents within the State, it is clear that such a law to be valid must not substantially hamper or burden the constitutional right on the one hand to make and on the other to receive such shipments.

Mr. NICHOLSON. Yes; I simply reiterate the argument that that old decision was made in the light of the interpretation of the Wilson Act, and, as I just said, plainly it would be contrary to the Constitution of the United States for any State to undertake to prohibit the shipment of liquor from one State to another State to be delivered to the consignee, simply because under the terms of the Wilson Act the article shipped possessed an interstate character to the time it got into the hands of the consignee.

The CHAIRMAN. Would not your bill be unconstitutional without the amendment—that is, assuming that the Supreme Court is right when they say you can not deprive a citizen of his right to ship and to receive liquor?

Mr. NICHOLSON. Let me say that the language used by the court in the case of *Vance v. Vandercook*, affirming the right to ship liquors from one State to another for personal use, subsequent to the passage of the Wilson Act, is no stronger than the language used by the court in the original-package decision in affirming the right to ship liquors, even for the purposes of State traffic, when sold in unbroken packages.

Now, I have arrived at that conclusion in my own mind by taking those two things into consideration—reading the original-package decision, and then reading the decision in *Vance v. Vandercook*—and I am impressed with that fact, as I have said, that the language is no stronger in affirming the right to ship liquor in for personal

use, under the Constitution, than it was affirmed in the original-package decision that they had a right to ship liquor in when sold in the original package.

Mr. BIRDSALL. Do you desire to prevent a person from shipping any liquor in for his own use?

Mr. NICHOLSON. I will answer it this way: This committee is not face to face with that question; Congress is not asked to prohibit the sale of liquor. It is simply asked to let the whole control of this question rest with the States. And we feel that the people and the States can be trusted to do what is best for its own citizens.

The CHAIRMAN. That is a very ingenious evasion of the question. [Laughter.]

Mr. BIRDSALL. You are here representing the Anti-Saloon League of America, and what I desire to get at is what that league desires.

Mr. NICHOLSON. We would like the unamended bill.

Mr. BIRDSALL. You would desire to prevent a citizen of a State from shipping in liquor for his own personal use? Is that the desire of the league?

Mr. NICHOLSON. I do not think the league has any policy upon that, because it has not been face to face with that in any State of the Union. But we believe that for Congress to step in when it is not an issue and prohibit the States from doing that is not necessary in order to prevent the proposed measure being declared unconstitutional.

Mr. PALMER. Do you think any State would ever pass or ever could pass a law forbidding a man to use alcoholic beverages?

Mr. NICHOLSON. I think it is very doubtful.

Mr. CLAYTON. The question we are dealing with is how far this power to regulate interstate commerce extends and how far you want it to be extended.

Mr. NICHOLSON. I think I covered the first question from my standpoint in the argument I have made here, that the decision in the *Vance v. Vandercook* case was a decision under the Wilson Act. What the league wants in this matter is, that while Congress is taking action on this question it will do it without qualification and leave the States free from untrammelled to do what they desire at any time for the public good.

To my mind, the court in *Vance v. Vandercook* was not declaring that which is an absolute right, which could not be affected by a law of Congress, for there was no such general subject before the court, but it was only declaring the rights existing by virtue of the Wilson Act.

This is more evident, because in the case of *Crowley v. Christensen* (137 U. S., 86) it is expressly stated as a fundamental principle that—

There is no inherent right in a citizen to sell intoxicating liquors by retail; it is not a privilege of a citizen of a State or of a citizen of the United States.

There is another phase of this question, which is perhaps the really difficult one, because it touches the question of personal rights, and we are asked if we intend to deny the use of liquors to the individual. In the first place, that question is not before this committee for settlement, except in the most indirect way, for, as has been said, this bill is not a prohibitory measure. By its own action it does not close a

single saloon, nor does it forbid any shipment of liquor. The only principle involved is that the States shall have complete jurisdiction over the whole liquor question in so far as it affects in any way their own citizens, or, to be more specific, that liquors shipped from one State to another shall immediately upon entry within the State be of the same character as liquors already within the State and subject to the same jurisdiction.

If Congress is to be committed to this principle, why should it qualify its action and say that some liquors shall not be thus subject to State laws? Is Congress afraid to trust the States to do that which they believe the best thing for their citizens? Is there not, in fact, grave danger in a system by which Congress seeks to establish one rule by which the citizens of a State may govern themselves as to personal habits, while the State may establish another standard denying the right of its own citizens to furnish that its people which Congress says the people from another State may furnish? Is it not better, while this subject is before Congress, to do what the people are expecting, viz, leave this whole question to be dealt with by the several States?

It is argued, however, that no State seeks to prohibit the use of liquor by its citizens. Just so; and the time may never come when this will be attempted, but some of them do prevent the sale of liquor, and it is a rare exception, if existing at all, where any State, either by a prohibitory law or by local option, exempts from its provisions the sale of liquor intended for personal use. Would not such a law be a farce? Suppose a State said no one shall sell liquor except it is intended for personal use. What would be the effect except to break up the wholesale business and give a monopoly to the retail trade? Most people buy liquors for their own use.

What an incongruity for Congress to take such action as will enable a State to say, "We will prohibit our people from selling liquors to our people, but we may not prevent certain people of other States from selling the same kind of liquors to our people."

After all, I am not going to run away from the admissions that States forbid the sale of liquor, not because there is any crime in the mere act of sale, but presumably because they regard its use by the people as detrimental to the public good. Were the question one only of personal benefit or injury, then the right to personal use could never be questioned. But when the use is attended by the increase of crime, pauperism, insanity, and public demoralization, then the question of the public good becomes paramount, a fact which this committee and Congress must needs consider if the personal question is to be injected.

Was ever a prohibitory law declared constitutional on the grounds that the mere sale is a crime that might produce pauperism, but not crime and insanity?

In the License cases (5 How., 504) the court said:

It is not necessary for the sake of justifying the State legislature now under consideration to array the appalling statistics of misery, pauperism, and crime which have their origin in the use or the abuse of ardent spirits.

In *Mugler v. Kansas* (123 U. S., 623) we find—

Nor can it be said that Government interferes with or impairs anyone's constitutional right of liberty or property when it determines that the manu-

facture and sale of intoxicating drinks for general or individual use as a beverage are or may become hurtful to society and to every member of it and is therefore a business in which no one may lawfully engage.

In *Crowley v. Christensen* (137 U. S., 86)—

The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtainable at these retail liquor stores than to any other source.

Finally, let me say that such an amendment will not only complicate the law, but will provide endless opportunities for evading the law. Where is there a court of inquiry to determine the intent or purpose of the shipment, and shall such inquiry be extended to every shipment? Without such investigation there will still exist endless opportunity for boot-legging and the speak-easy, and although the States may reach a solution of this evil, so far as the traffic in their own liquors is concerned, yet the problem will be more difficult if this amendment is incorporated.

Mr. BIRDSALL. Now, will you permit me to ask you a question or two?

Mr. NICHOLSON. Yes. I shall be glad to answer if I can.

Mr. BIRDSALL. I want to understand your theory of this bill, if I can. First, your understanding is that this Littlefield bill surrenders to the State whatever power Congress may have over the subject under the Constitution and leaves the State with supreme authority to deal with the liquor question?

Mr. NICHOLSON. Within its own borders.

Mr. BIRDSALL. Yes. And having relegated all that power to the State, it is then your understanding that the State would have the power to prohibit a private individual from buying liquor in a foreign State and shipping it to himself?

Mr. NICHOLSON. No more so than it would prohibit the delivery of its own liquors to him. What we want to get at is that there will not be any difference in the character of the liquors.

Mr. BIRDSALL. What is your understanding of the bill? If it is passed, would it give the States that authority?

Mr. NICHOLSON. Yes; but it is another question whether a State would ever exercise it.

Mr. PALMER. If the bill does not confer that authority, you are not for it, are you?

Mr. NICHOLSON. I only speak personally, because I do not think any action has been taken on that point by the league.

Mr. CLAYTON. What is your idea individually?

Mr. NICHOLSON. The only benefit would be, as I have already said, that it would break up the storage idea in the express offices and the promiscuous shipment to A, B, C, and so on. So far as I can see, that is the only benefit; but I believe, Mr. Chairman and gentlemen of the committee, that with that amendment in the bill largely the same abuses would go on which go on under the Wilson law.

Mr. CLAYTON. Do you not think that the bill which was reported by this committee in the last Congress, as amended, would prevent this storage business that you speak of?

Mr. NICHOLSON. Yes; I think so.

Mr. CLAYTON. Then what is the objection now to taking that bill, which was reported under Report No. 2337, made at the second session of the Fifty-eighth Congress?

Mr. NICHOLSON. My objection is simply the objection I am making to the amendment to this measure, that it does not do what we believe is sought and ought to be sought.

Mr. CLAYTON. You admit it breaks up the storage room in the State?

Mr. NICHOLSON. Yes.

Mr. SMITH, of Kentucky. And the C. O. D. business?

Mr. NICHOLSON. Yes; that is, this indirect C. O. D. and this business of going week after week and getting liquors in storage there.

Mr. CLAYTON. The only two exceptions in this bill is where the liquor is to be transported through the State and the other is where it comes into the State for bona fide delivery to the actual consumer. Those are the two exceptions. Does it not eliminate all the other evils?

Mr. NICHOLSON. We think not.

Mr. CLAYTON. What other evils would stand? You could not ship the liquor except to transport it from one State to another on bona fide shipment to an actual consumer for his own personal use. Those are the only two exceptions by which liquor is permitted under that amended bill to go from one State into another State.

Mr. SMITH, of Kentucky. He says they abandoned that bill last year because it did not do what they wanted.

Mr. CLAYTON. Do you think we have got the constitutional power in the law, as decided in the *Vance v. Vandercook* decision and the other decision, that we have got the power to go to the extent that you now seem to claim, that we shall construe the power to regulate commerce to mean the power to prevent commerce?

Mr. NICHOLSON. No; I beg pardon. I do not mean to say that, because I say emphatically that this bill does not do anything except relegate the whole matter to the States. It simply turns the whole question over to the States.

Mr. PALMER. The only difference between the Littlefield bill and the bill which the committee reported last year is that the Littlefield bill puts the burden upon the consignee to prove that the liquor is sent to him for his own use and not for sale, and the committee's bill puts the burden of proof upon the Government. Under the Littlefield bill you have a right to ship and deliver the goods to the consignee. Then there is to be no infringement of the common carrier's right to continue to transport such merchandise from without the State to the person residing therein.

Mr. NICHOLSON. Liquor shipped from one State to another without reference to what it is intended for would be subject to the same conditions under the State law that liquors are already subject to within the States.

Mr. CLAYTON. In these two exceptions that I have just mentioned, as was specified last year, it is merely a recognition of two constitutional rights—the right to ship liquor through the State, and the right to ship liquor to a person for his own individual use and make a bona fide shipment for the personal use of the consignee. Do you think we can pass an act in pursuance of the power to regulate commerce that would deprive a person in one State of the right to ship liquor through the State to a destination beyond that State, or that would deprive a citizen of a State of the right to ship into a State

in good faith liquor for his own individual personal use, but not for sale?

Mr. NICHOLSON. That is a question, Mr. Clayton, that we want the States to determine for themselves.

Mr. CLAYTON. You see, we are bound to deal with a question here as to the extent of the power of Congress. There is no use in our passing an act, you know, that will not stand the test of judicial scrutiny.

Mr. NICHOLSON. As to the question of power; Mr. Clayton, I do not believe that there is a shadow of doubt that Congress has the power to go any extent it wants to in relinquishing control of this or any other article of commerce it wants to, and leaving it to the control of the State at any point it may desire.

Mr. CLAYTON. Let me state the converse of our proposition. Suppose we should put into this act a provision to the effect that no State should ship liquor through any other State for destination in a State beyond. Do you suppose that would be upheld?

Mr. NICHOLSON. No; I do not think it would, for the simple reason that it is not within the State in any legal sense, because it came from the State where it once belonged and it is going to another State where it is intended for.

Mr. SMITH, of Kentucky. It is just interstate commerce.

Mr. NICHOLSON. There is no reason why the State should have jurisdiction over it. I doubt if it would be constitutional, because you would then be opening the way for the State to have jurisdiction over an article that it ought to have no business to have jurisdiction over.

Mr. BIRDSALL. Do you not think the cause of temperance would be better subserved by passing a law to which there was no kind of constitutional objection, rather than going into a field where there is doubt and likelihood of litigation?

Mr. NICHOLSON. If there is objection on that score, I think there is objection to this whole bill—constitutionally, I mean.

Mr. PALMER. There seems to be. [Laughter.]

Mr. CLAYTON. You think the whole bill is unconstitutional?

Mr. NICHOLSON. No. What I mean is, if you are going to have the bill overturned on a constitutional point because of this amendment, I think for the same reasons, for the unconstitutionality of it would apply equally to the whole bill itself. In other words, I think the bill would be constitutional as it stands or would be constitutional as amended. I do not think there is any question about that.

Mr. CLAYTON. I understood you to say just now that you thought this bill was unconstitutional.

Mr. NICHOLSON. Oh, no. I said if you are going to say this bill is unconstitutional because the amendment is not put in, then, for the same reason, I think the bill itself would be unconstitutional, because the Congress would not have the power to do one thing more than to do the other thing.

Mr. STERLING. You admit, if this proviso were not in the bill, that it would be unconstitutional?

Mr. NICHOLSON. No, sir.

Mr. STERLING. I understood you to say it would probably be an unconstitutional provision to undertake to not permit a shipment, to send liquor through a State.

Mr. PALMER. That is another proposition altogether.

Mr. NICHOLSON. I am not prepared to answer about the constitutionality or unconstitutionality of an act. I think that provision, that Congress should not attempt to allow a State to exercise jurisdiction over something that has never rightfully belonged to it, is a wise provision.

I think I misunderstood your question or proposition in the statement I made. I did not mean to assert for a moment that this bill is unconstitutional. I think it is plainly constitutional, just as much so as the Wilson Act. I think the bill as amended would be plainly constitutional. It is simply a question with Congress as to how far it would go in releasing liquors from possessing the interstate-commerce character that they now possess under the law.

Mr. CLAYTON. What would be the effect, then, if you say this Littlefield bill does not intend to deprive any person of the right to have liquor shipped for his own use—what is your objection, then, at the end of the proviso on page 2 of the Littlefield bill, No. 13655, right after the word “therein”—

That shipments of certain liquors entirely through a State or Territory, and not intended for delivery therein, shall not be subject to the provisions of this act, nor shall this act authorize the infringement of the right of common carriers to continuously transport such merchandise from without such State to a station therein—

and the bona fide delivery to any person solely for the personal use of such person or consignee, and not intended for sale in said State or Territory in violation of the laws thereof. What would be the objection to putting that in?

Mr. NICHOLSON. Simply because it qualifies the purpose of this bill and puts an embargo on the State which ought not to be imposed if the States are to be given full jurisdiction of the question.

In answer to the question as to Maine—the Chairman switched me off from Maine. [Laughter.] I do not know of any State in the Union that under existing laws, under this Littlefield bill, would prohibit the shipment of liquor into the State for personal use.

Mr. PALMER. Judge Birdsall, of Iowa, has one for you. [Laughter.]

Mr. NICHOLSON. I want to say, Mr. Chairman, while he is getting ready to read that, that so far as the Anti-Saloon League is concerned it is equally desirous with Congress to get something to remedy existing conditions which in many of the communities have become unbearable.

Mr. CLAYTON. That is the wish of the committee, but we do not want to violate the Constitution.

Mr. BIRDSALL. I want to read you from the law of Iowa. [Reads:]

If any express or railway company, or any common carrier, or person, or anyone as the agent or employe thereof, shall transport or convey to any person within this State any intoxicating liquors without first having been furnished with a certificate from the clerk of the court issuing the permit showing that the consignee is a permit holder and authorized to sell liquors in the county to which the shipment is made, such company, common carrier, person, agent, or employe thereof shall, upon conviction, be fined in the sum of one hundred dollars for each offense and pay the costs of prosecution, including a reasonable attorney's fee to be taxed by the court.

The offense herein created shall be held committed and complete and to have been committed in any county in the State in which the liquors are received

for transportation, through which they are transported, or in which they are delivered. The defendant in a prosecution under this section may show by a preponderance of the evidence as a defence that the character, circumstances, and contents of the shipment were made known to him, or that the person to whom the shipment was made has complied with the provisions of this chapter relating to the mulct tax.

If any person, for the purpose of procuring the shipment, transportation, or conveyance of any intoxicating liquors within this State, shall make to any company, corporation, or common carrier, or to any agent thereof, or other person, any false statements as to the character or contents of any box, barrel, or other vessel or package containing such liquors, or shall refuse to give correct and truthful information as to the contents of any such box, barrel, or other vessel or package so sought to be transported or conveyed; or shall falsely mark, brand, or label such box, barrel, or other vessel or package in order to conceal the fact that the same contains intoxicating liquors for the purposes aforesaid, or shall by any device or concealment procure or attempt to procure the conveyance or transportation of such liquors as herein prohibited, he shall, upon conviction, be fined for each offense one hundred dollars and costs of prosecution, etc.

Under the Littlefield bill the moment the liquor crosses the boundary of the State it will become subject to all its laws.

Mr. NICHOLSON. Yes.

Mr. BIRDSALL. And this bill further provides that the venue shall be in the county from which it comes, through which it passes, and to which it goes; and under that would it be possible to transport it across the State?

Mr. NEVIN. What you are after is that they may do that if they want it?

Mr. NICHOLSON. Yes; I thought I made that plain, Mr. Chairman.

Mr. SMITH, of Kentucky. I understand that the tendency of your remarks is that you would cut off the right to get it for personal use if you could.

Mr. NICHOLSON. I have not said that.

Mr. SMITH, of Kentucky. But you have declined to answer questions as to whether you and the Anti-Saloon League wanted that, and your failure to answer the questions is indicative of the fact that you did stand for that. And yet you say yourself that the reason you abandoned this bill two years ago was because it put in an amendment there providing for the shipment of liquor for personal use.

Mr. NICHOLSON. I am not prepared to say that our association would advocate the passage of such a law as that read from Iowa. I am not prepared to say whether that is unconstitutional or not.

Mr. BIRDSALL. That has been construed to mean that it would not prevent shipments for personal use under present laws.

Mr. NICHOLSON. If the State of Iowa, for the sake of its public good, sees fit to enact legislation even of such a stringent character as that the question is, Is Congress warranted in taking such action as preventing the State of Iowa from doing what it believes to be for the good of its own citizens?

I beg pardon, Mr. Chairman, for taking up so much of your time. I did not intend to do so.

Mr. CLAYTON. The committee is responsible for taking up a considerable part of your time.

Mr. NICHOLSON. I am sorry I could not shed more light on the subject. I think one more speaker is the only other speaker we have here. Mrs. Ellis is here, and she would like to speak for ten minutes.

The CHAIRMAN. The committee will rise at half-past 12 and take a

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"A United" of Miss Maudslayi, DCE BILLS OF WASHINGTON
1. C. Legislative SUPERINTENDENT OF THE WASHINGTON
WORKERS' INTERNATIONAL COMPLAINTS UNION.

But I am all confidence and gentleness of the committee. I am
gladly participating of the National Woman's Christian Tem-
perance Union. The group is very nice & official. I come from
the old group before arguments are to pass the truth or our
side in the thing so that as the question iron a different
subject from the old and the woman's expression.

The Woman's National Temperance Union is in favor of the fact that all women in zoology need for speaking, for I represent the combined business and community of this country, who should be heard and recognized as a potential factor in every interest pertaining to the welfare of humanity. This is why I have come here to speak in behalf of the community who are interested, instead of being a part of the progress of the world as it flows the home and the world.

"There is no race of any nationality who are benefited, as I believe, and are unwelcome or of great concern, out of the right of women to stand before you tonight as equals to other men, to come here and raise our voices in protest against anything which interferes with the sacred right of woman to her nationality in the home. It is the right of every citizen to be protected in her home. It is the right of the mother, as well as the father, to be protected in her home for the sake of her children: and I am firmly believe that the true case with which this bill deals is the sacred duty of the land and the highest interests of the home and the human life.

That is one reason why I am here this morning. We believe in State rights. We believe in the right of every State to govern itself. We believe in the exercise by the State of its fullest functions, of the police power, for the public safety and the public health; and public morals should be maintained inviolate. We believe that Congress, so far as in its power lies, should help the State rather than hinder it; for the purpose and intention of this bill, as I understand it, is to hinder, or to help, or to protect, as far as Congress may, a State which has, by the sacred right of the ballot, outlawed the liquor traffic, the manufacture and sale of alcoholic liquor in their midst. And yet by and under the guise and by the permission of the interstate-commerce law liquor is transported into these States, and this

accursed thing which has been voted out by a majority of the votes of its citizens is sold despite their votes.

Now, this is unjust. We all believe that this is unjust; and what we want is, and what we ask is, that you gentlemen of this committee, who are so familiar with the breadth of the country and its scope and its needs, will take such action as will remedy the evil. We believe that you are ready to give to the people of the United States protection along this line, as was intended when the Wilson Act came before us. We believed in it. So we now come to you. When the Hepburn-Dolliver bill was before you, two years ago, a great many petitions passed through my office, coming to Congress, and those petitions, many of them, were accompanied by letters citing the facts that the writers lived in prohibition territory because of the danger to some one of their families.

I wish I had some of those letters before me now. I have only one to-day, that came from Iowa only a few weeks ago. The most of these letters wound up by asking, "What can we do?" That is what we want to know. The writers are living under prohibition statutes, and yet these shipments come in and upset the happiness and peace and rights of those people.

Here is a letter which came to me the other day from Vanhorn, Benton County, Iowa. [Reads:]

Our county of Benton has no open saloons, but liquor is being shipped in our little town by the United States Express Company. A liquor firm outside the State has secured the names of about one hundred men in our vicinity, and is constantly shipping liquor in original packages to them. The liquor is not ordered, but the firm sends a postal card to each man telling him the package is at the express office, and if he does not wish to pay for it to "please hand this card to some one who would."

. And this woman asks, "What can be done?"

I have here a notice that on November 3 a large haul of 216 sealed bottles of whisky was made by the sheriff's deputy at Scarboro Beach, Maine. When seized by him from the express company or transfer company, they were at once libeled and the goods ordered destroyed by the judge. The State claims that the package was left there by the consignee, while the express company claims that the delivery had not been made and would not be made until the consignee received the goods from the company. That is a fine law point for you, gentlemen. [Laughter.]

Here is a picture [producing same] of the American Express Company's room. They call it "the rum room." This is from the Portland Express. I would like to pass it down the table; Scarboro Beach, Maine. They have had a great fight there—a magnificent fight with the illicit liquor traffic.

I thank you very much, gentlemen. I am here to speak for your homes, for the homes that are represented in this Congress of the United States; I am here to speak this morning for protection for the boys that we are trying to raise, and we are trying to keep the accursed thing from coming into the places where it has been outlawed.

Mr. HEXAMER. Now, Mr. Chairman, I would like to introduce Mr. Frank Siebelick, the chairman of the committee of Massachusetts. He has an important engagement, and would be glad to speak for two minutes, if you will permit.

recess until 2 o'clock this afternoon, in order to give the gentlemen an opportunity to do their work.

Mr. NICHOLSON. I request, before you abandon this discussion, that Mr. Sweet be permitted to address you. He would like to say a very few words in closing.

Mr. ALEXANDER. I suggest, Mr. Chairman, if the lady is not through by half-past 12, that she be given an opportunity to continue this afternoon.

Mr. NICHOLSON. I am advised that others have come in, and if some of them would like to be heard I would be glad if they could have that privilege.

Mr. Chairman and gentlemen, permit me to introduce Mrs. Margaret Dye Ellis.

STATEMENT OF MRS. MARGARET DYE ELLIS, OF WASHINGTON, D. C., LEGISLATIVE SUPERINTENDENT OF THE NATIONAL WOMAN'S CHRISTIAN TEMPERANCE UNION.

Mrs. ELLIS. Mr. Chairman and gentlemen of the committee, I am legislative superintendent of the National Woman's Christian Temperance Union. Not being a lawyer nor a logician, I come before you not to bring flashy arguments nor to parry the thrusts of our friends on the other side who see this question from so different a viewpoint from myself and the women I represent.

The Woman's Christian Temperance Union is in favor of the Littlefield bill. I make no apology here for speaking, for I represent the womanhood, the Christian womanhood, of this country, who should be heard and recognized as a potential factor in every interest pertaining to the welfare of humanity. That is why I have come here to speak in behalf of the womanhood who are interested, intensely interested in the passage of this bill, as it affects the home and the home life.

There is no need of my entering into the benefits, as I believe, of total abstinence or of prohibition, nor of the right of women to stand before you, though we come as suppliants, to come here and raise our voices in protest against anything which interferes with the sacred right of happiness and well-being in the home. It is the right of every citizen to protect that home. It is the right of the mother, as far as she can, to protect her home for the sake of her children; and we honestly believe that the business with which this bill deals is the direct enemy of the best and the highest interests of the home and the home life.

That is one reason why I am here this morning. We believe in State rights. We believe in the right of every State to govern itself. We believe in the exercise by the State of its fullest functions, of the police power, for the public safety and the public health; and public morals should be maintained inviolate. We believe that Congress, as far as in its power lies, should help the State rather than hinder it; for the purpose and intention of this bill, as I understand it, is to consider, or to help, or to protect, as far as Congress may, a State which has, by the sacred right of the ballot, outlawed the liquor traffic, the manufacture and sale of alcoholic liquor in their midst. And yet by and under the guise and by the permission of the interstate-commerce law liquor is transported into these States, and this

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Mr. HEXAMER. Now, Mr. Chairman, I would like to introduce Mr. Frank Siebelick, the chairman of the committee of Massachusetts. He has an important engagement, and would be glad to speak for two minutes, if you will permit.

Mr. WARWICK M. HOUGH. Mr. Chairman, I would like to speak for five minutes. I have traveled a thousand miles for the privilege of doing so, and I am obliged to leave the city this afternoon.

The CHAIRMAN. We will hear you in a few minutes. Now, we will listen to Mr. Siebelick, of Boston, for ten minutes.

STATEMENT OF MR. FRANK SIEBELICK, OF BOSTON, MASS.

Mr. SIEBELICK. Mr. Chairman and gentlemen, I will take only five minutes. I represent and am a member of the German-American Alliance, which has thousands of members in Massachusetts; and their position in this matter, I desire to state to the honorable gentlemen of this committee, is that there is no demand for such legislation as this.

You have heard stated the arguments pro and con concerning the constitutionality of the bill that is before you for consideration, and in my judgment, that matter enters into the case. But the policy of Massachusetts at the present time is that we have laws enough. The policy of those with whom I am an humble associate, the policy of the organization of which I am an humble member, is that we have laws enough.

If I might state, though, for the benefit of the honorable gentlemen of this committee and for my friends who are here to-day, that if they ever went through the State of Maine, which it is the intention to allow to regulate for itself matters pertaining to this act, or the several copies which are before you, they would find all the way from Kittery, which is on the State boundary between New Hampshire and Maine, up to Eastport, Me., which is the most extreme eastern port in the United States, and in Bangor, Me., a condition which could not be any worse if it were under a full license system. There are up there, under the existing conditions, more speak-easies, so-called, and more rum shops that are open on Sundays and week days—and we in Massachusetts under a license system do not allow that—than can be found in any other State of its size in the Union, and the way, Mr. Chairman and gentlemen of this committee, in which they would still be allowed to obtain liquor in original packages if you would create an act by Congress would be to ship it in from New Brunswick, which is a part of the British Government, and send it by original packages from there.

I leave it to the wisdom and the sound sense of the gentlemen of this committee whether we have not the constitutional right to regulate the liquor traffic under our own State laws.

I desire to say that in the association of which I have the honor to be in part the representative we have business men, and we have those who went to the front in the Spanish war, men who are trying to bring up their children—and most of them have large families—for the highest citizenship and in conformity with the highest ideals of American citizens. Most of them, seven-eighths of them, are naturalized American citizens, and they are proud of it; but they do feel that it is an infringement upon their personal rights and personal liberty not to be allowed to have liquor sent to them if they may order it, if they should ever live in a prohibitory State, a thing which one of these bills would certainly prevent, notwithstanding the fact that the United States Government heretofore has not permitted the

States to interfere with commerce between the States. This shows you how the law works out in many cases and how it makes hypocrites of men.

For example, the city of Bangor, Me., has issued over 150 revenue licenses. I do not know whether the honorable gentleman from Maine is here to-day or not, but throughout the entire State of Maine those conditions exist. It shows you the farce of the system, and there is no demand for such legislation.

On the contrary, within the past six years the States of Vermont and New Hampshire have thrown up the prohibitory law. The people there in their sound wisdom and good sense saw the farce of that kind of legislation. Never mind how you endeavor to restrict liquor, it will nevertheless be obtained, and it is better to have a system where the intent is to conduct the business on a higher plane, to regulate the sale in an orderly way, than can be done by any prohibitory act which the honorable members of this committee and of Congress may enact in the current session.

In my brief statement I am not only voicing the views of the German-American Alliance of Massachusetts, but if those with whom I am acquainted had learned the purport of this bill—the Hepburn-Dolliver bill—I am sure you would have here to-day from Massachusetts probably as many again as there are in the room at the present time, because they would feel that this proposed legislation would certainly work an injustice on personal liberty.

MR. HEXAMER. Mr. Chairman, I would like to correct a statement inadvertently made by Mr. Siebelick. The German-American Alliance has a membership of a million and a half, and every member is required to be a citizen of the United States. A man can not be a member of that organization without being a naturalized citizen.

The CHAIRMAN. Now, Mr. Hough.

STATEMENT OF MR. WARWICK M. HOUGH, OF ST. LOUIS, GENERAL COUNSEL FOR THE NATIONAL WHOLESALE LIQUOR DEALERS' ASSOCIATION OF AMERICA.

MR. HOUGH. Mr. Chairman and gentlemen of the committee, I appear before you as general counsel for the National Wholesale Liquor Dealers' Association of America. I appeared in this capacity before this committee at the last session of Congress when this question was up before, and I am going to ask that the argument which I made on that occasion be incorporated in the proceedings of the hearing at this time, in order that I may not take up any unnecessary time in going over the same questions which I went over with practically every member of this committee at that time. I presume that request will be granted.

MR. CLAYTON. Have you a copy of it there?

MR. HOUGH. Yes, sir.

Statement of Mr. Warwick M. Hough, of St. Louis, Mo., general counsel for the National Wholesale Liquor Dealers' Association of America, an organization which comprises the leading distillers and wholesale dealers of the United States.

MR. HOUGH. Mr. Chairman and gentlemen of the committee, laws which are enacted under our form of government are supposed to re-

flect the sentiment and opinions of the majority represented by the law-enacting body, whether the law-enacting body is a municipal assembly, a State legislature, or the National Congress, but no law is any stronger than the sentiment of the people of the place or locality to which it applies or where it is to be enforced. Where the prohibitory laws of a State or the police regulations of a State in respect to the manufacture and sale of intoxicating liquors truthfully reflect the sentiment of the people where such laws or regulations are to be enforced there is never any difficulty in enforcing them, but where such laws and regulations do not truthfully reflect the sentiment and opinions of the people amongst whom they are to be enforced they are seldom enforced, and in consequence fall into innocuous desuetude and disrepute.

The crusade against the manufacture and sale of intoxicating liquors is the outgrowth of national and State organizations which reflect the sentiment of less than 20 per cent of the people and the voters of the whole United States, though the percentage in particular localities is, of course, very much greater.

All people believe in temperance—temperance in eating as well as in drinking—and the comparatively insignificant number in the United States who erroneously believe that temperance in drinking can be advanced by prohibitory measures frequently secure the assistance in the passage of most drastic laws of many strong advocates of temperance who do not at heart believe in the principles of prohibition. The results indicate, however, that prohibition has been a pronounced failure everywhere it has been attempted, and the strong temperance allies have from time to time abandoned the ultra prohibitionists to work out more satisfactory results through high license and strict regulations.

This bill is an insidious move on the part of these ultra prohibitionists to bring to their aid the strong arm of the Federal Government to accomplish that about the accomplishment of which the moral sentiment in localities where such prohibitory measures now apply is either indifferent or not sufficiently strong to compel an enforcement of such laws. That this is true is apparent not only from our knowledge of the conditions as they exist in such localities, but from the report which was made with this bill when it was reported at the last Congress and the debate which occurred on the floor of the House when it came up for passage.

The bill appears to have been reported at that time unanimously, and while I had at the first session of that Congress requested an opportunity of being heard, if the author of the bill intended to push it, I am informed that it was reported without a hearing, and therefore practically without such a discussion as to its merits as would have disclosed both its real purpose and effect and its viciousness.

While I am prepared to argue at the proper time and place that prohibition without qualification and without limitation is not only unconstitutional, but absolutely antagonistic to every principle upon which our Government was founded and utterly destructive of the natural and inherent rights of man, it is only necessary in connection with this discussion to say that this bill goes further than any prohibitionist has ever attempted to go before, individually or collectively, in enforcing his views upon temperance upon his fellow-men,

and, indeed, this view of the law was disclosed on the discussion of this measure on the floor of the House, wherein it was stated that the sole purpose of the bill was to enable the States to prohibit the carrying on of the business of selling.

The report which was made with the bill in the last Congress states in substance that the effect of the decision of the Supreme Court in the case of *Leisy v. Hardin* (135 U. S., 100) was to deny to the States the right to regulate or prohibit within such States the sale of intoxicating liquors while they remain in the original packages; that to remove the effect of that decision the act of August 8, 1890, was passed, the constitutionality of which was upheld in the case of *In re Rahrer* (140 U. S., 545), but that the purpose of the law was practically destroyed by the decision of the Supreme Court in the case of *Rhodes v. Iowa* (170 U. S., 415), under which decision the States were practically "powerless either to prohibit such sales or to exercise any control or regulation over them," and that it was the purpose of the bill then reported to give the States the right to prohibit such sales in such States, and thus accomplish what was the original purpose of the act of August 8, 1890.

In the debate on the floor of the House Mr. Clayton stated as follows:

In other words, this is simply a proposition to restore to the States in this matter full and ample power to enforce their police regulations against the sale of intoxicating liquors; that is the whole question. (Congressional Record, January 27, 1903, p. 1390.)

In answer to a question from Mr. Bartholdt, as to whether the bill did not go further than that and as to whether it would not prevent the private citizen not engaged in selling from securing for his own table what he might see fit to drink, Mr. Clayton replied:

No, I do not think it goes to that extent; on the contrary, I am sure it does not go to that extent.

In reply to a question from Mr. Kleberg as to whether the bill would prevent the introduction of liquor into the State by a private individual, Mr. Hepburn stated:

I think not, unless it is brought there for some illegal purpose. It is not illegal for the gentleman to carry liquors into the State of Iowa for his own consumption.

And again,

It is the illegal sale of liquor that our statute has been enacted to prohibit.

In reply to a similar question from Mr. Bartholdt, Mr. Hepburn replied:

There is certainly no provision that he may not do that, and no law of the State of Iowa that would prohibit him from doing that.

Other advocates of the bill on the floor of the House spoke to the same purpose, from which it is clear that the view of this committee in reporting that bill was that the bill was designed solely to prohibit, or to enable the States to prohibit, the carrying on of the business of selling intoxicating liquors within their domain, even though they may remain in the original packages.

That this was also the view of the various temperance societies advocating the passage of this bill is apparent from a reference to

Senate Document No. 150, of the present session of Congress, which was printed February 8, 1904, wherein, on page 9, it says that the bill will—

not prevent anyone from buying liquors wherever they are legally sold in his State or out of it, but only prevents liquor dealers outside of a State from invading it to sell "original packages" of liquors to "speak easies" by the aid of the interstate-commerce powers of Congress. By comparing this law with a sample of State laws following it will be seen that the Hepburn bill does not prevent buying liquors for private use.

And statements to similar effect were made by every speaker, as I recall it, since I have been in this room, except by Mrs. Foster, who frankly admitted that her purpose was to wipe out the manufacture and sale of intoxicating liquors entirely. Either she understands the purpose of the bill better or she is a little more honest in admitting its purpose.

If we can show, therefore, that this right and this power to prohibit the carrying on the business of selling within the State already exist under the laws, and are sufficiently safe-guarded and protected, then we must conclude that our temperance and prohibition friends have been unnecessarily stampeded by the decision of the Supreme Court in the case of *Rhodes v. Iowa*, and that there is no necessity for this legislation at all, if it goes no further than its advocates claim. But if we can show, in addition, that the effect of this bill, if enacted into a law, would be to accomplish the very thing declared by all its advocates not to be the purpose of the bill, then surely this committee will not only feel themselves untrammelled by the action taken by this committee in the last Congress, but, in view of the variance between the avowed purposes intended to be accomplished and the effect of this bill, will not hesitate to reject it; and such action may all the more readily be taken in view of the further fact that even if the effect of the bill, as thus disclosed, was the hidden purpose of its promoters, such purpose and effect have been declared by the Supreme Court to be violative of the Constitution of the United States.

Mr. POWERS. Right there, Judge Hough, I would like to ask you a question.

Mr. HOUGH. Certainly.

Mr. POWERS. There is one question in my mind that seems to me to be the entire pith of the question of the constitutionality of the bill, and this is the question I would like to hear you upon. I suppose it will be conceded that the several States surrendered to the National Government the exclusive control over interstate commerce between the several States and Territories, and it is probably conceded that the National Government may not surrender its exclusive control over interstate commerce except by an amendment to the Constitution. Nobody has said that it is the intention to surrender to the States by an act of Congress exclusive control over an article of commerce the control over which is vested in the National Government.

Mr. HOUGH. It is an attempt to delegate a part of the power it possesses under that clause of the Constitution to the extent that it will give the States the right to regulate shipments without necessarily involving the right to sell, and I cover that when I come to it in this argument, and I will be very glad to answer any further questions on

that line when I get through. But I have prepared this with reference to presenting this one point, and I would like to keep this idea in mind which I have started in upon, and would like to keep it continuously in the minds of the members.

Mr. POWERS. Very well.

Mr. HOUGH. Now, on the first point, as to the necessity, since the only difference in the prohibition situation occasioned by the decision of the Supreme Court in the case of *Leisy v. Hardin* was with reference to the sale of intoxicating liquors in such prohibition districts in the original packages, it is to be assumed that such prohibition laws were being, prior to such decision, satisfactorily and adequately enforced in prohibition districts where the popular sentiment really favored such legislation; and it must be conceded that the effect of the decision in the case of *Leisy v. Hardin* was to give the importer of intoxicating liquors the right to sell in such prohibition districts in contravention of the local laws as long as the liquor remained in the original packages.

The Supreme Court of the United States in the cases of *Rhodes v. Iowa* (170 U. S., 412) and *Vance v. Vandercook* (170 U. S., 438) has emphatically declared that the effect of the act of August 8, 1890, known as the "Wilson Act," was to remove the protection which the interstate-commerce clause of the Federal Constitution and the failure of Congress to legislate thereon had thrown around original packages, in so far as the right to sell or carry on the business of selling in the prohibition districts was concerned.

In the latter case the court says (p. 445):

It is also certain that the settled doctrine is that the power to ship merchandise from one State into another carries with it, as an incident, the right in the receiver of the goods to sell them in the original packages, any State regulation to the contrary notwithstanding: that is to say, that the goods received by interstate commerce remain under the shelter of the interstate-commerce clause of the Constitution until by a sale in the original package they have been mingled with the general mass of property in the State. This last proposition, however, whilst generically treated, is no longer applicable to intoxicating liquors, since Congress in the exercise of its lawful authority has recognized the power of the several States to control the incidental right of sale in the original packages of intoxicating liquors shipped into one State from another, so as to enable the States to prevent the exercise by the receiver of the accessory right of selling intoxicating liquors in original packages, except in conformity to lawful State regulations.

In other words, by virtue of the act of Congress, the receiver of intoxicating liquors in one State sent from another can no longer assert a right to sell in defiance of the State law in the original packages, because Congress has recognized to the contrary. The act of Congress referred to, chapter 728, was approved August 8, 1890, and is entitled "An act to limit the effect of the regulations of commerce between the several States and with foreign countries in certain cases." It reads as follows: (Here follows the act.) The scope and effect of this act of Congress have been settled in *In re Rahrer* (140 U. S., 545), and *Rhodes v. Iowa* (ante, 412). In the first of these cases the constitutional power of Congress to pass the enactment in question was upheld, and the purpose of Congress in adopting it was declared to have been to allow State laws to operate on liquor shipments into one State from another, so as to prevent the sale in the original package in violation of State laws.

In the second case the same view was taken of the statute, and although it was decided that the power of the State did not attach to the intoxicating liquors when in course of transit and until receipt and delivery, it was yet reiterated that the obvious and plain meaning of the act of Congress was to allow the State laws to attach to intoxicating liquors received by interstate commerce shipments before sale in the original package, and therefore at such a time as to prevent such sale if made unlawful by the State law.

This citation and the decision in the case of *Rhodes v. Iowa* ought to clearly settle my first proposition.

They at last clearly demonstrate that the effect of the Wilson Act was to restore the situation or the condition of things as they existed prior to the decision in the case *Leisy v. Hardin*, in so far as the right of a State was concerned to prohibit the sale of intoxicating liquors at any place within the State. This being so, it is demonstrated that the reasons which were given in the report of this committee at the last Congress as to the necessity for the proposed legislation did not in fact exist; they existed only in the stampeded imagination of the prohibitionists.

There is no reason therefore why the prohibition laws in the various States of the Union should not be as vigorously enforced to-day as they ever were prior to the original-package decision. If they were not so enforced it must be due to the lack of moral sentiment behind those laws to stimulate which this national legislation is sought.

Such being the state of the law with reference to the right to prohibit sales, it occurs to me that the real grievance of the prohibitionists is not against the interstate-commerce clause of the Federal Constitution or any clause of the Constitution, but against the law of "sales."

Roughly speaking, a sale is a contract, and a contract is a meeting of the minds, and therefore the sale is effected at the place where the minds meet.

Applying these principles of the law of sales, the United States circuit court of appeals of the fifth circuit decided, in the case of *De Bary v. Souer* (101 Fed. Rep., 425), that where a wholesale liquor firm located in the city of New York received at their place of business orders for liquor, and accepts them there, the sale is made there and not elsewhere, no matter where the goods may be delivered. This was the case, I may state, brought against the United States involving the recovery of a tax paid under the internal-revenue laws which had been assessed for carrying on the business at another place than New York; and all these cases to which I am calling attention are cases that have arisen under the United States internal-revenue laws. The Department is enforcing these laws, seeking as far as possible to require people who are carrying on the business of selling to pay the special tax to the Government for carrying on such business.

To the same effect is the judgment of the United States circuit court of appeals for the ninth circuit in the case of *United States v. Chevallier* (107 Fed., 434), wherein it was held that where a wholesale liquor dealer located in San Francisco receives orders from his traveling salesman in Oregon which are accepted and filled at the place of business in San Francisco the sale is made and the liquor is sold in San Francisco and not in Oregon.

To the same effect is the judgment of the United States court in *Iowa* in the very case referred to in the argument on the floor of the House by Judge Smith in the last Congress.

The liability for the special tax under the United States internal-revenue laws is for carrying on the business of selling, and it has been held under those laws that making a single sale incurs the liability. See *Ledbetter v. United States* (170 U. S., 606).

The case in question is that of the *United States v. Adams Express Company* (119 Fed., 240).

In this case the Adams Express Company was indicted in Iowa under the United States internal-revenue law for carrying on the business of selling liquor without having paid the special tax on account of carrying what is known as a C. O. D. shipment from Dallas, Ill., to Birmingham, Iowa. The court in that case held that the interstate-commerce clause of the Constitution was not involved, and the only question was whether the defendant by carrying such a shipment and receiving the purchase price had sold the liquors.

The decision of the court was that the sale had been made by the party who delivered the shipment to the express company in Illinois, and that that conclusion of the court was in perfect harmony with the decisions of the supreme court of Iowa itself, stating the law of "sales."

In other words, it holds that the general principles as to the place where a sale is made are not affected by the fact that the payment is to be in cash when delivered.

To the same effect is the judgment of the United States court in Kentucky in the case of *United States v. Parker* (121 Fed., 596), which was also a case of C. O. D. shipment.

And, finally, to the same effect is the very recent decision of the Supreme Court of the United States in the case of *Norfolk and Western R. R. Co. v. Sims*, decided December 7, 1903, and reported in No. 4 of the advance sheets of the October term, January 15, 1904.

In that case the Supreme Court says:

A sale really consists of two separate and distinct elements. First, a contract of sale which is complete when the offer is made and accepted; and second, a delivery of the property which may precede, be accompanied by, or followed by the payment of the price as may have been agreed upon between the parties. The substance of the sale is the agreement to sell and its acceptance.

And though the shipment was a C. O. D. shipment, the court held that the sale was made where the order was received and accepted.

Such transactions as are referred to in these authorities can not offend against the police regulations of any State which are limited to prohibiting the selling or the carrying on of the business of selling intoxicating liquors in such State, and no State legislation can have any effect upon or control such a transaction unless the State legislation can be given extraterritorial force and effect, and any State law which attempts this, with or without the aid of Federal legislation, necessarily abandons the legitimate domain of the police power and enters the realm of interstate-commerce regulations. (*Rhodes v. Iowa*, *supra*.)

This is an impossible feat, for three reasons; and this brings us to my second position:

First. No State law can possibly have any greater extraterritorial force than any other State law, and therefore if the law of one State should forbid a thing to be done beyond its territorial limits which under the laws of a sister State could or should be done, an irreconcilable conflict instantly arises.

As was said in the case of *Bowman v. C. and N. W. Rwy.* (125 U. S., 465):

In the present case the defendant is sued as a common carrier in the State of Illinois, and the breach of duty alleged against it is a violation of the law of that State in refusing to receive and transport goods which, as a common carrier, by

that law it was bound to accept and carry. It interposes as a defense a law of the State of Iowa which forbids the delivery of such goods within that State. Has the law of Iowa any extraterritorial force which does not belong to the law of the State of Illinois? If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter?

Second. Independent of this irreconcilable conflict it would amount to regulating to interstate commerce on the part of the State over and above the enforcement of any police regulation. This the State can not do, nor can such power be delegated by Congress.

As was said in the case of *In re Rahrer* (140 U. S., 560) :

It does not admit of argument that Congress can neither delegate its own powers nor enlarge those of a State.

And third, because it would have the effect of abridging the personal right guaranteed by the Constitution itself of bringing into a State wines or liquors for one's own use.

In the case of *Vance v. Vandercook* (170 U. S., 438) the Supreme Court, in holding that part of the South Carolina dispensary law unconstitutional which interfered with the right of a citizen to ship into the State for his own use and in holding the rest of the law constitutional, said, discussing the rest of the law :

But the weight of the contention is overcome when it is considered that the interstate-commerce clause of the Constitution guarantees the right to ship merchandise from one State to another and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress which does not allow State authority to attach to the original package before sale, but only after delivery.

Scott v. Donald, supra; *Rhodes v. Iowa*, supra: It follows that under the Constitution of the United States every resident of South Carolina is free to receive for his own use liquor from other States, and that the inhibitions of a State statute do not operate to prevent liquors from other States from being shipped into such State on the order of a resident for his use. This demonstrates the unsoundness of the contention that if State agents are the only ones authorized to buy liquor for sale in a State, and they select the liquor to be sold from particular States, the products of other States will be excluded. They can not be excluded if they are free to come in for the use of any resident of South Carolina who may elect to order them for his use.

The products of other States will be, of course, excluded from sale in the original packages in the State, but as the right of the State to prevent the sale in original packages of intoxicants coming from other States, in consequence of the State law forbidding the sale of any but certain liquor, attaches to the original packages from other States by virtue of the act of Congress, the inability to make such sales arises from a lawful State enactment. To hold the law unconstitutional because it prevents such sales in the original package would be to decide that the State law was unconstitutional because it exerted a power which the State had a lawful right to exercise. Indeed, the law of the State here under review does not purport to forbid the shipment into the State from other States of intoxicating liquors for the use of a resident, and if it did so it would upon principle, and under the ruling in *Scott v. Donald*, to that extent be in conflict with the Constitution of the United States.

It is argued that the foregoing considerations are inapplicable, since the State law now before us, while it recognizes the right of residents of other States to ship liquor into South Carolina for the use of residents therein, attaches to the exercise of that right such restrictions as virtually destroy it.

But the right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States, and does not rest upon the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine this contention—then they are void. If they do not, then there is no lawful ground of complaint on the subject.

It further appears that the right to ship for private use was conditioned upon obtaining a certificate from a chemist, and the court held that this was an unlawful restriction upon this constitutional right to ship for private use, and therefore void.

But it is worthy of note that the holding of the balance of the dispensary law of South Carolina constitutional hinged upon the proposition that the right to make an interstate shipment for personal use was founded in the Constitution and not upon any legislative grant. Had it been otherwise, the logic of the opinion is that the entire law would have been held unconstitutional.

Now, we have already seen that so far as the right and the power to prohibit sales of intoxicating liquors in prohibited districts is concerned, the present laws are not only ample, but are precisely what they were before the alarming original-package decision was rendered, and furthermore, that they are all sufficient to accomplish the purposes alleged to be accomplished by this bill. There is therefore no necessity for this law.

It only remains for us to see whether the proposed law goes beyond those purposes and falls within the condemnation of the authorities cited.

Under the construction of the law in the case of *Rhodes v. Iowa* a citizen of Iowa is entitled to receive an interstate shipment of liquor, and the police power of the State can not touch it before it is delivered to him. If he has ordered it for his own use he can consume it, but if he has ordered it to sell, a State law is violated when he sells, and it only remains for the local authorities to enforce the law against him for so selling.

This natural and reasonable distinction between the right of an individual to receive for his own use and the power of the State to punish him if he sells, even though in the original package, thus establishing a clear line of demarcation between legitimate police regulations and the regulations of interstate commerce, is brought about by the construction given the Wilson Act by the Supreme Court wherein the words "upon arrival in such States" are declared to mean "arrival at the point of destination and delivery there to the consignee."

The proposed law not only inserts the words "before and after delivery" in the present Wilson law, but adds a second section, which in express terms asks that the nonresident shipper and the nonresident common carrier engaged in interstate commerce shall be amenable to the police regulations of the State into which shipments of liquor are made.

It would be hard to conceive of more vicious legislation, because not only does it propose to produce that irreconcilable conflict between State laws, but it proposes to submit interstate shipments to State control without necessarily touching upon the right to sell, the unconstitutionality of which needs no argument to demonstrate.

In the case of *Rhodes v. Iowa*, page 426, the court says:

We think that, interpreting the statute by the light of all its provisions, it was not intended to and did not cause the power of the State to attach to an interstate shipment while the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery thereto to the consignee, and of course this conclusion renders it entirely unnecessary to con-

sider whether, if the act of Congress had submitted the right to make interstate-commerce shipments subject to State control, it would be repugnant to the Constitution.

This is to indicate clearly that an act of Congress purporting to submit such shipments to State control before delivery would be submitting the right to make interstate-commerce shipments subject to State control; but more than this, if the right is given to subject such shipment to State control before delivery, how are the rights of the individual who may ship for his own use protected?

It is alleged by its advocates that this bill would not interfere with such right.

A present law of Iowa, and one which was under discussion in the case of *Rhodes v. Iowa*, is as follows:

If any express company, railway company, or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation any intoxicating liquors without having first been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed, or delivered is authorized to sell such intoxicating liquors in such county, such company, corporation, or person so offending, and each of them, and any agent of said company, corporation, or person so offending shall, upon conviction thereof, be fined in the sum of \$100 for each offense and pay costs of prosecution, and the cost shall include a reasonable attorney fee, to be assessed by the court, which shall be paid into the county fund, and stand committed to the county jail until such fine and costs of prosecution are paid.

The offense herein defined shall be held to be complete, and shall be held to have been committed in any county of the State through or to which said intoxicating liquors are transported, or in which the same is unloaded for transportation, or in which said liquors are conveyed from place to place or delivered. It shall be the duty of the several county auditors of the State to issue the certificate herein contemplated to any person having such permit, and the certificate so issued shall be truly dated when issued, and shall specify the date at which the permit expires, as shown by the county records: *Provided, however,* That the defendant may show as a defense hereunder by preponderance of evidence that the character and circumstances of the shipment and its contents were unknown to him.

This law makes no distinction between a shipment to a person for his own use and a shipment to a person who intends to sell the liquor after he receives it. It makes every shipment absolutely unlawful unless the shipment is accompanied by a certificate issued by the proper State officer to the effect that the consignee is authorized to sell. If the consignee is ordering for his own use, he does not want to sell, and could not get the certificate.

It is clear, therefore, that the proposed legislation, in connection with possible State legislation, not only goes much further than the alleged purpose of its advocates, but, as legislation, it would be more objectionable than that under consideration in the case of *Vance v. Vandercook*.

In that case, while the right of the individual was restricted, it was possible to obtain a certificate under which a shipment could be obtained for private use. Under the proposed combination of laws it would be absolutely impossible. And yet, notwithstanding such impossibility, in the case of the South Carolina law the court held that there could be absolutely no restriction upon the right to

ship for private use, because such right rested on the Constitution. Mark you, "on the Constitution," and not on legislative enactment, and, of course, that covers Congressional as well as State enactments. That which is founded on the Constitution can not be abridged by an act of Congress.

In view, therefore, of the premises, from which there seems no escape from the conclusions that there exists no such necessity for this legislation to accomplish only what this is alleged to accomplish, as was thought to exist at the time this bill was reported from the committee in the last Congress, and that even if it were not constitutional that the bill goes much further than was alleged to be its purpose, I ask this committee, How can you be expected to favor it?

It seems to me that the gentlemen of this committee should say to these reformers: Go first to the State and pass a law against drinking, and when you have done that, then come and ask Congress to help you enforce such a provision; because, no matter from what standpoint you approach this question, no matter from what point of view you discuss it, it always resolves itself in the end to the question, "Shall you prohibit the right of the individual to consume or drink what he sees fit?"

SECOND ARGUMENT.

Mr. Chairman and gentlemen of the committee, when I appeared before you last I endeavored to establish three propositions. The first was that the necessity for the proposed legislation which was supposed to exist did not exist in fact. In other words, that no additional legislation was needed to remove any obstacle in the way of the States enforcing their police regulations concerning the manufacture or sale of intoxicating liquors; second, that the practical effect of this measure would be to accomplish only the very thing alleged by all its advocates not to be their purpose; and, third, that the legal effect of the bill is such as has already been declared by the Supreme Court would be unconstitutional. In a subsequent communication to this committee I stated that, if you believed any one of these propositions to be true, I did not see how you could consistently report this measure, and that if you did not believe all of these propositions to be true, it might be due in part to the fact that there had not been a sufficient discussion of them.

I am inclined to believe that every member of this committee believes every one of those propositions to be true, and if I may be mistaken on that point, and there should be any doubt in the minds of any members of this committee, I hope that such doubt may be disclosed by questions or otherwise, because I am here to-day to do all in my power to resolve that doubt into certainty.

Mr. ALEXANDER. How many propositions were there? You spoke of several propositions.

Mr. HOUGH. Three propositions.

Mr. ALEXANDER. Now, will you briefly summarize them? I was not here to hear your remarks the other day, and I would like you to briefly state those propositions.

Mr. HOUGH. First, that the necessity for the legislation which was supposed to exist, which was stated, by the members on the floor, to

exist, which was stated in the report of this committee at the time this bill was reported in the last Congress as existing, did not in fact exist. It had been alleged that it was necessary to have this legislation to enable the States to enforce their police regulations with reference to the sale of intoxicating liquors. I demonstrated that it was not necessary in order to enable the States to enforce their police regulations against either the manufacture or sale of intoxicating liquors within the State.

Second. I stated, and demonstrated, as I believe, that the only effect of the bill **would** be to accomplish the very thing alleged by all its advocates not to be their purpose.

And third, whether or not the **practical** effect of this bill was the hidden or secret purpose of its advocates, its legal effect would be such as has already been declared by the Supreme Court would be unconstitutional, as being a delegation to the States of the power to regulate an interstate shipment.

Mr. ALEXANDER. Now, on that last proposition, was your argument along the line of Mr. Sherley's?

Mr. HOUGH. I probably took it up where he left off. My argument on that point has been printed, I see, and I am not now following the argument exactly as it was made at that time; but I am proposing to present a few new reasons why those propositions are true, and that can probably best be accomplished by referring to some of the arguments of some of those who have favored this measure.

Recalling what I heard of the oral arguments and what I have read of the printed arguments on this subject, I think possibly the statement of Judge Smith, of Iowa, went more directly to the point than the statement of any of the other gentlemen before this committee on that side, and yet I regret to say that he made hardly more than one statement with which I can agree. That was that the real issue does not involve prohibition or antiprohibition, temperance or intemperance, and in making that admission I submit in all candor that Judge Smith admitted away his entire case. At any rate, he clearly admitted the truth of my first proposition.

When any legislation is suggested which has for its purpose enabling the States to carry into effect prohibition, there is necessarily involved the sociological aspect of that question; but if legislation is suggested which has no bearing upon that proposition, and if legislation is not needed for that purpose, then certainly the sociological view is not involved, and I think I am indebted to the gentleman for making that proposition so clear. Therefore it must be admitted, or considered as admitted, that there is no necessity for the proposed legislation so far as to enable the States to enforce their police regulations against the sale of intoxicating liquors within the States is concerned.

Yet, notwithstanding this statement by Judge Smith, he was illogical enough, later on in his argument, to refer to the conditions which existed in Iowa, and to the necessity of this law to enable them to cope with those conditions, and stated, furthermore, that the purpose of this bill is to accomplish the very thing intended to be accomplished by this committee and by Congress at the time the Wilson bill was reported and passed. Waiving this illogicality, I desire to take issue with that statement of fact, and I feel sure that it was made without due consideration of the arguments which were made

in the House and Senate on that measure, and without due consideration of the action which was taken by this committee at that time.

That bill was introduced in the Senate by Mr. Wilson, of Iowa, in the first session of the Fifty-first Congress, December 4, 1889, and was referred to the Committee on Judiciary. It was reported back May 14, 1890, with an amendment, and debated. The debate in the Senate ran through a period of two months, and the bill finally passed the Senate in the form of the present law.

The incidental right of sale in an original package, contrary to State legislation, was the only phase thought to be reached by the bill, as declared by all its advocates, and Mr. Edmunds, in discussing the effect which the decision of the courts in the case of *Leisy v. Hardin* had had on the business of selling intoxicating liquors within the State and the necessity for the proposed legislation, stated:

Now, Congress proposes to say that the right to import is not to carry the implication of the right to sell against the policy of the State; but if you import at all, you must import, and when you have got it there it must take its chance with all the other property in the State, where the health and safety of the State are concerned.

Now, it is clear from this statement, as well as from the statements of all the others who advocated that measure in the Senate, that the sole purpose of the legislation in the Senate was to cut out the incidental right of sale in the original package, and not to interfere in any degree with an interstate shipment before delivery to the consignee.

Mr. Reed, of Iowa, reported the bill to the House from the Committee on the Judiciary, but instead of reporting the Senate bill, reported as follows:

Strike out all after the enacting clause and insert the following:

"That whenever any article of commerce is imported into any State from any other State, Territory, or foreign nation, and there held and offered for sale, the same shall then be subject to the laws of such State: *Provided*, That no discrimination shall be made by any State in favor of its citizens against those of other States or Territories in respect to the sale of any article of commerce, nor in favor of its own products against those of like character produced in other States or Territories. Nor shall the transportation of commerce through any State be obstructed, except in the necessary enforcement of the health laws of such State."

I call your particular attention to the words "and there held and offered for sale" as indicating clearly that it was not the intent to have the State laws apply until after delivery to the consignee.

Mr. Taylor, in stating the case to the House (p. 7427), said that, under the decision of the Supreme Court in the case of *Brown v. Houston*, it was thought that an interstate shipment became massed with the general property of the State, so as to be subject to the State laws when it had reached its destination in the State, and that the decision of the Supreme Court in the case of *Leisy v. Hardin* had come as a great surprise to lawyers, as well as laymen, in holding that it did not become so massed until after the first sale in the original package. Under that decision he said:

Not only must the property be consigned and delivered in the States, ready for sale and offered for sale, but it must be once sold before interstate commerce ceases and commerce within the State begins.

It is this addition which has made the trouble and which was unexpected.

Now, what was the addition? Only the right of sale in the original package after it had reached the consignee. Could the purpose of Congress and the purpose of this committee be more clearly defined than that? And on the same point, Mr. Reed, of Iowa, said:

I think no one would doubt the power of Congress to enact such a law—that is, a law providing that when intoxicating liquors are carried into that State as articles of commerce they shall be sold only for the purpose prescribed by the statutes of the State and under restrictions similar to those contained in the laws of that State. The pending bill would simply reach the same result in another way. Instead of prescribing, as Congress might, in specific terms the restrictions which shall be imposed upon its traffic, its effect would be to subject it to those restrictions. So that in either case the same result would be reached. The one enactment would as certainly operate as a regulation of the traffic as would the other.

I refer to this statement of Mr. Reed, not as indorsing the legal views expressed therein which may touch upon the question of the power of delegation or the right to delegate a part of the power, but to indicate in connection with everything else that was said by all the members of the House and by all the members of the Senate, in connection with the report of this bill from this committee, that the sole purpose attempted to be accomplished at that time was to cut out the incidental right of sale and not, as was argued by the State of Iowa in the Rhodes case and as has been stated by the advocates of the bill before this committee, to interfere with the shipment before delivery to the consignee.

The House substitute was adopted by the House, and the bill went to conference. The Senate refused to recede, and the House did, and in asking the House to concur, Mr. Reed stated that the only difference between the Senate bill and the House bill was that the Senate bill applied to intoxicating liquors only and the House bill was intended to apply to all commodities.

It is therefore perfectly apparent that all the statements which have been made before this committee to the effect that the proposed legislation is necessary in order to overcome the restricted construction of the Wilson law by the Supreme Court in the Rhodes case and to accomplish what was the original purpose of the Wilson law are not supported by the facts. But it is perfectly clear that the construction given the Wilson Act by the Supreme Court in the Rhodes case accomplishes precisely the purpose which was proposed to be accomplished by the passage of that law.

The position taken by the Prohibitionists, which led to the issue presented in the Rhodes case, was clearly an afterthought, based upon the hope that the language used could be so twisted or distorted as to accomplish something more than the original purpose.

In view of these facts, can any gentleman on this committee any longer claim that the proposed legislation is necessary to enable the States to apply their laws against the sale of intoxicating liquor, or that it is necessary to accomplish what was proposed to be accomplished at the time the Wilson law was passed, or that the Supreme Court, in its decision in the Rhodes case, in anywise restricted that purpose? I think clearly not.

If the purpose of the advocates of this bill, and of the members of the committee who might be inclined to favor it, based upon the statements of those advocates, is sincere, and they mean to accomplish only that, why not report the same bill which was reported by this

committee at that time, and then there will be no doubt about accomplishing what you intended to accomplish at that time?

In answer to questions from Mr. Clayton and Judge De Armond, as to the difference in the wording of the proposed bill and the wording of the Wilson bill, especially with reference to the words "within the boundaries of," Judge Smith stated that there was no difference, or, at least, that he would be very glad to be told what the difference was. It seems to me that the difference is radical. The words in the Wilson law, "shall upon arrival in such State or Territory," taken in their commercial and legal sense, carry with them the idea of destination, whereas the words in the proposed bill, "shall upon arrival within the boundary of such State or Territory," negative the idea of destination, and indicate the purpose to have the State law apply before the shipment reaches its destination in the State, and at any time after it passes the boundary limits. Much was said by both—

Mr. ALEXANDER. Please state when the end of the quotation comes hereafter so we can tell what you are quoting and what is your own language.

Mr. HOUGH. That quotation ended after the word "territory." In fact, both of them did.

Much was said about what any State or any prohibition community would do if such a law was passed; but I desire to state, in this connection, that the proposed legislation must be judged by everything it is possible to do under it, by it, or through it, and not by what probably will be done.

The gentleman declared that it was not the purpose of this bill, or of anybody, to have State laws operate extraterritorially, but in making such statements two views were clearly overlooked. The first is, that if Congress undertakes to permit a State law to operate upon an interstate shipment before the transit is completed, it necessarily has the effect of attempting to give the State laws extraterritorial effect. Such was emphatically declared to be so by the Supreme Court in the Bowman case. But with respect to the proposed legislation we are not to be left in doubt. The difference between the Wilson law and the first provisions of the proposed measure are radical and vital, but there is a section which the remarks of my brother lead me to believe he has never read. It is as follows:

SEC. 2. That all corporations and persons engaged in interstate commerce shall, as to any shipment or transportation of fermented, distilled, or other intoxicating liquors or liquids, be subject to all laws and police regulations with reference to such liquors or liquids, or the shipment or transportation thereof, of the State in which the place of destination is situated, and shall not be exempt therefrom by reason of such liquors or liquids being introduced therein in original packages or otherwise, but nothing in this act shall be construed to authorize a State to control or in anywise interfere with the transporting of any liquors intended for shipment entirely through such a State and not intended for delivery therein.

We can imagine any number of laws of a most sweeping character which might be enacted under this permission, but it is only necessary to refer to an existing law in Iowa to demonstrate its viciousness. I refer to the law which forbids a common carrier from transporting any intoxicating liquors without first having received a certificate; and, mark you, it says first having received a certificate.

Something was said at the last hearing about the possibility of this certificate being obtained by the common carrier after it comes into the State of Iowa, but this second provision proposes to reach outside of the State and control its action where it starts in any other State of the Union.

Mr. ALEXANDER. May I interrupt you there?

Mr. HOUGH. Certainly.

Mr. ALEXANDER. Are you familiar with the Iowa law?

Mr. HOUGH. Yes, sir. I quoted it in my last argument, and it is printed—that is, the Iowa law on this point. I do not know that I am familiar with all the provisions of all the laws of Iowa.

Mr. ALEXANDER. There seems to be some misapprehension in regard to what the Iowa law suggests in regard to liquor imported to a bona fide consignee. What is your opinion?

Mr. HOUGH. I think you mean a bona fide consumer.

Mr. ALEXANDER. A bona fide consumer.

Mr. HOUGH. The law makes no distinction between a consumer and the man who is going to receive for the purpose of selling. The Iowa law——

Mr. ALEXANDER. Now, let me ask you this: Supposing you are a citizen of Iowa, and send to Louisville for a keg of whisky for your own consumption in your own household. Under the Iowa law could that be stopped at the borders of the State?

Mr. HOUGH. If you should pass this bill it would be an attempt to give the State of Iowa permission to stop it at the borders of the State, because——

Mr. ALEXANDER. That is not the point. With the law as it exists at present would it stop it there?

Mr. HOUGH. It would if it had validity, but the Supreme Court of the United States, in the Rhodes case, said that it could not have that effect.

The CHAIRMAN. What you mean is, that when Congress has acted then the Iowa law becomes operative.

Mr. HOUGH. Exactly. If this would be held to be a constitutional enactment, then the State law would become operative, and the effect would be to give the State the power to stop an interstate shipment at the boundary, because the Iowa law draws no distinction in requiring the certificate, which is required to accompany the shipment, between a shipment that is going to be brought there for a man to sell and a shipment that is going to be brought there for a man to consume at his house.

Mr. BRANTLEY. The question is, under the law of Iowa as it exists to-day, if this pending measure is passed and is constitutional, would it have the effect suggested by Mr. Alexander?

Mr. HOUGH. That is what I say; it would have that effect. It would give them permission to stop the shipment that was unaccompanied by a certificate at any time after it had reached the boundary and prior to delivery to the consignee, and the suggestion of Judge Smith that they might have difficulty in catching it is no answer to that proposition, because it does not go to the principle, and laws are not to be passed on the theory that you may not be able to enforce them, but they are to be passed on the theory that they can and will be enforced.

Mr. BRANTLEY. I have not read the decision of the Supreme Court which decided the South Carolina dispensary case——

Mr. HOUGH. The case of *Vance v. Vandercook*——

Mr. BRANTLEY. But I have been told the Supreme Court says that no State can pass a law which will prohibit an individual from importing intoxicating liquors for his own use. Is that a fact?

Mr. HOUGH. Yes, sir. I quoted that case in my last argument here. And they furthermore said that that is a right of the individual which is protected by the Constitution, a right existing prior to the Constitution and protected by the Constitution, and can not be whittled away or legislated away in any way whatever.

Mr. BRANTLEY. Is it not predicated upon the interstate-commerce clause of the Constitution?

Mr. HOUGH. They said it was that clause of the Constitution that protected that right.

Mr. BRANTLEY. Would not that protection apply as much to the man that wanted to consume as the man who wanted to sell—the man who wanted to import?

Mr. HOUGH. Congress has the right to regulate an interstate-commerce shipment. Now, there is a difference between interstate commerce and an interstate shipment, and I refer to a decision in Iowa which explains all that is covered by interstate commerce, which is more than what is covered by the term “an interstate shipment.” Congress has said that the incidental right of sale can be separated from the right to make an interstate shipment, although the Supreme Court had previously said that the incidental right of sale was a part of interstate commerce; and while Mr. Reed, of Iowa, stated that they were surprised, in view of the former decision of the Supreme Court in the case of *Brown v. Houston* (114 U. S.), I say they need not be surprised, if they will read that case a little closer, because it was forecast in that decision that there was a distinction between that kind of a case, which was a case where coal had gone in, involving no question of original package, and a case of where shipment can be made in what can be clearly considered an original package, and they used the words “original package” in the case, and indicated that if it came from a foreign nation it would be protected in that form until after sale. In the *Vance v. Vandercook* case they were discussing “discrimination” as well as the interstate-commerce clause of the Federal Constitution. The point was made that the dispensary law of South Carolina was invalid because it restricted the right of individuals from the different States to ship into the States.

Mr. ALEXANDER. The point there was that they first had to go to the dispensary officers.

Mr. HOUGH. Yes; they had to go to the dispensary officers and get a certificate of purity.

Mr. ALEXANDER. And the nonresident had to go to the officer of the State before he could ship it on. That was in *Vance* against *Vandercook*.

Mr. HOUGH. Now, if there had not been this right of the individual to his ship in for his own use, the dispensary law of South Carolina would not have been declared unconstitutional as being discrimination, not particularly as violating the interstate-commerce clause,

but as being discrimination against the citizens and the products of citizens of other States.

Mr. HENRY, of Texas. That is, class legislation?

Mr. HOUGH. Yes; and the Supreme Court says that, since that rights exists, an individual can order his liquors from any State in the Union, and that right can not be hampered in any way, and the court says, in the opinion, that it will refer to the question of restriction later. Now, then, when they come to it later they find that a citizen, according to the laws of South Carolina, had to get a certificate of purity; he had to get a sample of his proposed shipment.

Mr. ALEXANDER. From the State chemist?

Mr. HOUGH. He had to submit it to the State chemist and get a certificate of purity. Now, the Supreme Court declared that part of the South Carolina dispensary law unconstitutional, because, they said, that right could not be hindered in any way whatever or impeded.

Mr. ALEXANDER. Now, Mr. Hough, when Judge Smith was speaking I asked him this question:

Under this bill would not liquors be stopped at the border of Iowa?

And he replied:

They certainly would not and could not be, unless they were imported for sale, because there is no law of Iowa, and never has been any law of Iowa, which made liquors contraband.

Mr. HOUGH. He is mistaken. The law of Iowa to which I referred this committee provides that before any common carrier—he probably overlooked this law, which applies to common carriers as distinguished from laws which might apply to the individual—that law says that no common carrier can transport in the State any intoxicating liquors unless he first receives a certificate, which must accompany the bill of lading, to the effect that the consignee is entitled to sell. The law of Iowa does not say anything about the right to consume at all; it makes no such distinction. In every case of a shipment of intoxicating liquors there must be that certificate that the consignee has the right to sell. And if a man is receiving for his own use and does not intend to sell, he could not get a certificate. Therefore, the shipment could not be accompanied by a certificate, and, therefore, it could not only be seized under the laws of Iowa, if this bill should be passed, but it could be seized at any time before delivery to the consignee, even before it reaches the town or city of its destination—any minute after it passes the boundary of the limits of the State—because it has not accompanying it that certificate which it is impossible for the man to get, because he does not intend to sell it. So, if you could physically carry out the law you could stop that shipment, and Judge Smith, in my opinion, did not answer your question correctly.

Mr. SMITH, of Kentucky. Will you embrace that provision of the Iowa law in your remarks?

Mr. HOUGH. I am sure it was in my last remarks, but I can not find it.

The CHAIRMAN. Your remarks were printed, and if you included it in your remarks you will probably find it there.

Mr. ALEXANDER. Just see if it is in your last remarks.

Mr. HOUGH (after examination of printed document). It is; here it is.

Mr. ALEXANDER. What is the page?

Mr. HOUGH. Page 65. I will read the law, and you will note that it does not distinguish between the consignee who is going to receive for his own use and a consignee who is going to receive for sale; but, for the reason which I am going to give you a little later, that makes no difference with respect to the proposed legislation, because until Congress passes a law prohibiting the shipment of intoxicating liquors from every State in the Union, a common carrier is bound to deliver to the consignee without reference to what his purpose is in receiving, and the shipper in every State in the Union is entitled to have that shipment delivered under the laws of his own State and the Constitution of the United States, in the absence of such prohibition by Congress against the shipment from every State. I say I will get to that later. I will read this law now [reading]:

If any express company, railway company, or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation any intoxicating liquors without having first been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported, or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed, or delivered is authorized to sell such intoxicating liquors in such county, such company, corporation, or person so offending, and each of them, and any agent of said company, corporation, or person so offending shall, upon conviction thereof, be fined in the sum of \$100 for each offense.

And so forth. I need not read more. The offense is deemed to be complete, and shall be held to have been committed in any county of the State through or to which said intoxicating liquors are transported. It can be prosecuted in any county of the State through which the shipment has gone.

Mr. LITTLE. That seems to meet your contention?

Mr. HOUGH. It meets it fully, and I say, in determining or discussing the legal effect of any law, you must assume everything that is possible to be done by State legislation; but so far as Iowa is concerned, we do not have to assume; we simply take the law as it exists.

Mr. ALEXANDER. Now, Mr. Hough, would these words which I will read put it within the case of Vance against Vandercook: "Without having first been furnished with the certificate from and under the seal of the county auditor of the county?"

Mr. HOUGH. If you require a man to get a certificate at all, even where he is going to receive it for his own use, it would be declared unconstitutional, according to the rule in *Vance v. Vandercook*. You can place no restriction on that right at all, if I understand your question.

Mr. GILLET, of California. Because they might refuse a certificate?

Mr. HOUGH. Yes; and there are any number of other reasons.

Mr. ALEXANDER. In *Vance v. Vandercook* the court said the South Carolina act compelled a resident of the State who desired to order liquors for his own use to first communicate his purpose to the State chemist, and it deprived a nonresident of the right to ship into a State unless authority was previously obtained from the officers of the State, and that these conditions are wholly incompatible with the

existence of the right which the statute itself acknowledges. That was in the case of *Vance v. Vandercook*.

Mr. HOUGH. Yes, sir.

Mr. ALEXANDER. Now, with your study of the question, in your opinion, would these words in the Iowa statute, "Without having first been furnished with a certificate from and under the seal of the county auditor of the county," put it on all fours with the statute in South Carolina?

Mr. HOUGH. As it is, it is more objectionable than that provision in the South Carolina dispensary law; but if the law of Iowa attempts to make the distinction between the right to import for sale and the right to import for use, and with that distinction in the Iowa law requiring any kind of a certificate at all, it would be on all fours with the case in the decision referred to.

But, for another reason, I want to call the attention of the committee to the fact that they can not distinguish, they can not apply any law to a shipment before that shipment reaches the consignee, without interfering with the rights of every other citizen in the United States outside of that State, without reference to whether that shipment comes in for use or for sale; and a law of the State of Iowa which attempted to permit it to come in and be delivered to the consignee, provided it was going to come for his own use, but which would prohibit it provided it was going to come for sale, and which should undertake to submit that question of fact to any jury in the State, would be declared to be unconstitutional, as much so as the proposed bill, because it can not be interfered with on any condition until Congress undertakes to prohibit the shipment from a sister State. I will explain that when I get a little further on.

Mr. ALEXANDER. I would like to hear that last sentence again.

Mr. HOUGH. No law of the State of Iowa would be constitutional, and Congress could not, by any legislation, give effect to a State law which would have the effect of interfering in any way with an interstate shipment prior to its delivery to the consignee, even if it went for the purpose of sale, until Congress should pass a law prohibiting such shipments from every State.

The CHAIRMAN. Now, to get at the matter practically, the very things that Judge Smith complains of could be prohibited under the laws of Iowa since the passage of the Wilson bill?

Mr. HOUGH. There is no question about it.

The CHAIRMAN. There is no legal embarrassment?

Mr. HOUGH. Not the slightest.

The CHAIRMAN. It is not the assistance of Congress that they need—

Mr. HOUGH. They ask Congress to help them because of the failure of the State agencies to enforce their laws.

The CHAIRMAN. I agree with you on that proposition.

Mr. HOUGH. And the only benefit to prohibition legislation in the States which could possibly come from any legislation of this kind would be analagous to the benefit which a community would derive by cutting off the head of a man to keep him from stealing.

The CHAIRMAN. The Supreme Court of the United States is unanimous on this proposition: That it is not within the power of Congress to prohibit the transportation of liquor into a State when it is ordered by a bona fide consignee.

The CHAIRMAN. No; it does not make any difference, in my judgment, about that.

Mr. HOUGH. It does not make any difference?

The CHAIRMAN. If he sends for it.

Mr. HOUGH. If he sends for it.

The CHAIRMAN. If he sends for it, the Supreme Court says unani-
mously, "You can not prohibit it, and it is not within the power of
Congress to stop it." Do you agree with me on that proposition?

Mr. HOUGH. Unless you pass a law—and I do not want to express
any legal opinion on that proposition—unless you pass a law which
says in express terms that there shall be no shipments from any State.
If you leave that open, then, the Supreme Court has said, you can
not pass a law which will have the effect of giving the State the right
to interfere with any interstate shipment prior to delivery.

The CHAIRMAN. The difference between your mind and mine on
this question is this: I understand from your argument, you say
that it is within the power of a man in Kentucky to ship it to Iowa
indifferently, without reference as to whether there is a bona fide
consignee there or not.

Mr. HOUGH. No, sir; I do not say that.

The CHAIRMAN. Then I misunderstood you.

Mr. HOUGH. I say that if the man in Iowa received the liquor in
advance of a bona fide order sent to the place of business in Kentucky,
that that is a sale in Iowa, and not a sale in Kentucky.

The CHAIRMAN. And absolutely forbidden by the laws of Iowa,
and all they have to do is to enforce the law they have there.

Mr. HOUGH. All they have to do is to enforce their law. Now, if
a man in Kentucky receives an order in Kentucky for a shipment,
he can send that order under the present state of the law—that is,
the Federal law; he can fill that order and send that shipment to
Iowa, and you can not, by this bill, or any bill like it, authorize
Iowa to interfere with that shipment before it reaches the con-
signee. When it reaches the consignee, under the laws of Iowa, he
is then forbidden to sell it, and it is the business of the officials in
Iowa to step in then and enforce their prohibition regulation against
selling, and they have ample authority to do that, under the con-
struction given the Wilson Act by the Supreme Court in the Rhodes
case.

Mr. GILLET, of California. Then your position is, Mr. Hough,
that in the absence of an act of Congress prohibiting a transportation
of intoxicating liquors, a general law, that there is a perfect right to
ship them, where a contract is entered into, from one State to
another?

Mr. HOUGH. More than that; you can sue the railroad company
if it fails to deliver.

Mr. GILLET, of California. Yes.

Mr. HOUGH. And you are enforcing a right not by the laws of
Iowa (because that right is not based on the law of the forum, but
the law of the place where the contract is made), but you are en-
forcing that right under the laws of Kentucky or New York, and
the Constitution of the United States, and the railroad company,
then, is in an embarrassing position.

The CHAIRMAN. And the law to-day is exactly the same as it was
when the Wilson bill was passed?

Mr. HOUGH. Precisely.

The CHAIRMAN. There has been no change?

Mr. HOUGH. You mean the Federal law?

The CHAIRMAN. Yes.

Mr. HOUGH. Precisely, and they are to-day in precisely the same position with reference to the right to enforce State regulations as they were prior to the original-package decision, prior to the time when that distinction was drawn.

The CHAIRMAN. There has been no decision of the Supreme Court of the United States that embarrasses the States in the least?

Mr. HOUGH. Not in the slightest. In other words, I think that the Supreme Court stretched a point to give them the benefit they enjoy to-day, but that is not material to the present discussion.

The CHAIRMAN. To repeat, the Supreme Court of the United States are unanimous on this point: That a person living in Iowa, in an absolute prohibition State, where the sale and manufacture of liquor is strictly forbidden, can not be prevented from sending into another State and having shipped to him liquor as long as he gives the order?

Mr. HOUGH. As long as he sends in the order.

The CHAIRMAN. He derives that right from the Constitution, and that right can not be impaired?

Mr. HOUGH. Precisely.

Mr. BRANTLEY. And from the interstate-commerce clause.

The CHAIRMAN. And from the interstate-commerce clause.

Mr. HOUGH. Both from that clause and from the other clause which prohibits discrimination against the citizens of the various States.

The CHAIRMAN. Then what is there to legislate on, when the advocates of the bill say they do not intend to prevent a man from ordering liquor on his own account?

Mr. HOUGH. Absolutely nothing to legislate for: As I said a while ago, referring to what was said when the Wilson measure was under discussion, they never intended to go any further than to cut out the incidental right of sale, and when the gentlemen say, as has been said every day that I have been here, that the sole purpose of this proposed law is to accomplish only the very thing which was intended to be accomplished by the Wilson law, they are making statements that are not borne out by the facts. When they say that the Supreme Court in the *Rhodes v. Iowa* case has given a restricted meaning to the Wilson law, I say they are making statements which are not borne out by the facts, and if the construction which was given the Wilson law by the Supreme Court in the *Rhodes* case accomplishes precisely what every man in the House and Senate said was their purpose in accomplishing when they passed the Wilson law, there is absolutely nothing to legislate upon and no necessity for any further legislation if the gentlemen do not want to interfere with interstate shipments, and they say they do not.

Mr. ALEXANDER. I want to put this in another way. If this bill should become a law, would it prevent any bona fide shipment not intended for sale, but which is transported solely for the purpose of actual delivery to the original consignee for his personal use and consumption?

Mr. HOUGH. Certainly it would, provided they could catch it, but then you must always assume that you can enforce laws.

Mr. ALEXANDER. What was your answer?

Mr. HOUGH. Certainly it would, because it would give them the right to apply a State law to an interstate shipment at any time after it reaches the boundary of the State and before delivery to the consignee.

Mr. GILLETT, of California. If it got to the consignee it might be different.

The CHAIRMAN. I do not think we quite agree for the moment. Is this a correct statement of the law? I assume, again, that I am living in an absolute prohibition State, where the manufacture and sale of liquor is absolutely prohibited. Now, if I want to send to Kentucky and have liquor shipped to me, if I order it myself, the question of bona fides does not arise, but the State can not prevent that shipment to me?

Mr. HOUGH. The State of Iowa or that community has no right—

The CHAIRMAN. Or any State?

Mr. HOUGH. Has no right—

The CHAIRMAN. But can a resident of the State of Kentucky, or any person in Kentucky, ship indifferently to the State of Iowa anticipating a customer?

Mr. HOUGH. That constitutes a sale at the place of destination, as has been decided by the Internal-Revenue Bureau, as well as the courts, and could be prohibited or punished by the State laws.

The CHAIRMAN. And it has been decided a number of times by the Supreme Court of the United States?

Mr. HOUGH. Yes.

The CHAIRMAN. When they complain there that jugs of whisky are shipped into Iowa and sold there in that way, all they have to do is to prosecute the parties under the State law?

Mr. HOUGH. There is no question about that.

The CHAIRMAN. And the man that sells that whisky shipped in there in that way is liable, and always has been?

Mr. HOUGH. He always has been.

The CHAIRMAN. Then we agree on the law.

Mr. HOUGH. And I think somebody instanced a case of that kind, where a number of jugs had been shipped to an express officer in advance of sale.

The CHAIRMAN. Judge Smith did, I think.

Mr. HOUGH. Which shows they can enforce it sometimes.

The CHAIRMAN. In Vance and Vandercock and in *Scott v. Donald* it was decided that they can not ship in advance of a customer, and that if they do it constitutes a sale in the State to which the liquor is shipped.

Mr. HOUGH. If it is prohibited in the State, then the State laws would apply in that kind of a case.

The CHAIRMAN. And all they have to do is to enforce the law, and the jugs of whisky have to disappear.

Mr. HOUGH. Exactly.

The CHAIRMAN. I made that statement to a gentleman on the floor of the House when our friend, Judge Smith, was making that statement, when this bill was before the House, that all they have to do is to go on and enforce the laws of the State of Iowa.

Mr. HOUGH. That is what I have said all the time. I said that the

last time I was here, and I say now that every case and every instance which has been cited by every person before this committee as indicating practical operations of dealers in prohibition sections have been cases with which existing laws are amply able to cope, if properly enforced. And, if it is true that the supreme court of Iowa has decided the flat question, as was stated by Judge Smith, that a C. O. D. shipment constitutes a sale at the point of delivery, then Iowa, at least, is in even a stronger position than any of the other States to cope with the evils of which they complain than if that court had not attempted to overrule a principle of law merchant which is supposed to have been established so long "whereof the memory of man runneth not to the contrary."

Mr. ALEXANDER. May I interrupt you with a question?

Mr. HOUGH. Certainly.

Mr. ALEXANDER. It is a much-disputed question among many members of the committee, and I want to get your idea about this. I asked you a moment ago whether, if this bill became a law, it would prevent any bona fide shipment not intended for sale, but which is transported solely for the purpose of actual delivery to the original consignee for his personal use and consumption, and your answer was that it would?

Mr. HOUGH. That is my answer.

Mr. ALEXANDER. Now, I want to ask you, further, whether if the bill contained that proviso it would be constitutional?

Mr. HOUGH. A proviso, you mean, that they could stop it if intended for sale and could not stop it if it was intended for use?

Mr. ALEXANDER. Yes.

Mr. HOUGH. It would not be constitutional, even then, for a reason which I will give you later on, because you can not interject into the case the question of fact as to what is the purpose, and until Congress prohibits absolutely the shipment from every State there exists the right of every shipper in the United States to have his shipments reach the consignee, no matter where he is or what it may be his purpose to do with the shipment after it reaches him.

Mr. GILLETTE, of California. And no matter what the use is to be?

Mr. HOUGH. No matter what the use is to be.

Mr. HENRY, of Texas. You take the broad ground that Congress can not permit a State to interfere with interstate commerce?

Mr. HOUGH. Exactly; that is what it resolves itself into.

Mr. HENRY, of Texas. Can not delegate its power?

Mr. HOUGH. Can not delegate its power.

Mr. BRANTLEY. Referring to this question asked you by Mr. Alexander, your position is that under the law of the State of Iowa as it now exists, if we pass this bill, the purpose and effect of this bill now pending would be that the State of Iowa would prohibit or could prohibit, under the present law, a man from importing liquor for his own personal use?

Mr. HOUGH. Yes, sir; and more—

Mr. BRANTLEY. One minute. But you contend that, even although we passed it, it would be an unconstitutional provision?

Mr. HOUGH. Clearly. This bill would be unconstitutional for these reasons—

Mr. BRANTLEY. And even although we amend this bill by elimi-

nating the man who imports for his own personal use, so as not to make him subject to the State law, that even then it would be unconstitutional?

Mr. HOUGH. Clearly so.

The CHAIRMAN. Why?

Mr. HOUGH. Because you can not interfere with any shipment before it reaches the consignee without trenching upon the rights of every other citizen in every other State than the destination of that shipment.

The CHAIRMAN. Now, your answer shows that we do not understand each other—

Mr. HOUGH. Of course, you understand that a great many of these questions raise questions which I have covered in this address. I am prepared to cover all these in the remarks I have laid out, and, to a certain extent, it flushes me to be asked these questions before I get to them in the line of argument I had laid out. I mean you get at these points before they are brought out in their strongest connection; but I do not object to that.

Mr. ALEXANDER. This is a good time to bring them out.

Mr. HOUGH. I do not object.

The CHAIRMAN. This raises this question: If I am in Iowa, under the conditions heretofore stated, and I give an order to any person outside of Iowa to ship me liquor, no one can question the purpose I have, under these decisions of the Supreme Court of the United States?

Mr. HOUGH. That is correct, and no one can question as to whether I have ordered that liquor to sell it or to use it.

The CHAIRMAN. But under the decision of the Supreme Court of the United States, to-day no man in any State outside of Iowa can anticipate a sale and make a shipment, and if he does it—

Mr. HOUGH. If he does it, that constitutes a sale at the place of delivery, and if there is a law at the place of delivery which forbids or punishes sales of intoxicating liquors, it would apply to that case.

Mr. GILLET of California. Then your position is this: That the laws of Iowa that would prevent a contract being carried out, if entered into in Kentucky, would have extraterritorial force?

Mr. HOUGH. The court said so in the Bowman case.

Mr. GILLET of California. And it would be unconstitutional?

Mr. HOUGH. Yes, sir. The Supreme Court said it in the Bowman case particularly. Therefore, I say that, if you should even try to amend this bill so as to discriminate or enable the State to discriminate between a shipment which it may be alleged is intended for sale, and a shipment which they may think is for private consumption, it would still be unconstitutional if it interfered in any way with that shipment prior to the time when it reaches the consignee, for reasons and authorities that I cite later.

Mr. ALEXANDER. Then you think this bill is unconstitutional, anyhow?

Mr. HOUGH. Clearly.

The CHAIRMAN. If you have no objection, I will ask you to suspend now, because, under our rules, we take a recess at this hour.

Thereupon, at 12.30, the committee took a recess until 2 o'clock p. m.

AFTERNOON SESSION.

The committee met at 2 o'clock p. m., Hon. John J. Jenkins in the chair.

STATEMENT OF MR. W. M. HOUGH—Continued.

Just before recess I had reached that point of my statement where I referred to a remark of Judge Smith, of Iowa, in reference to a decision in that State on the C. O. D. question, and I stated that if it were true that the supreme court of Iowa had decided the flat question that a C. O. D. shipment constituted a sale at the point of delivery, they were in a better condition to cope with the evils complained of than any other State. I am inclined, however, to doubt that the supreme court of Iowa has decided the flat question in any such way, and I am inclined to believe that there was some other element in the case than the mere C. O. D. proposition which conduced to the conclusion reached, if, as I say, any such conclusion was reached. I was not able to find any decision of the supreme court of Iowa which covered that proposition, but in the latest volume of reported cases—the latest volume of the Iowa reports, the 117th Iowa—I find the following case, *State v. Hanaphy*, wherein the court decides that where a traveling salesman, whose principal was engaged in the sale of intoxicating liquors in the State of Illinois, solicited and accepted an order for liquor in Iowa, which order was sent to the house in Illinois, and there accepted, and the goods sent C. O. D. from the principal to the buyer, the transaction constituted interstate commerce, and the salesman was not liable to prosecution under an act prohibiting the soliciting and filling of orders.

That is inconsistent with the proposition that a C. O. D. shipment constituted a sale at the point of delivery. It may be that the case Judge Smith had in mind was a case where a shipment was sent C. O. D., and the party to whom it was consigned did not call for it, and the bill of lading was transferred to somebody else, and the other person called and took it. I say it may have been that kind of a case, and if it was that kind of a case, then such facts constituted a sale at the point of delivery, irrespective of the fact that it may have been shipped C. O. D. The supreme court of Iowa, in the *Hanaphy* case, says some further things to which I will refer later on; another proposition which is even more important than this.

It is earnestly and seriously contended that it is not the purpose of this bill to interfere in any way with the rights of an individual, and yet those who assert this willfully or negligently ignore the fact that the distinction drawn by the Supreme Court in the *Rhodes* case as to the time when State laws could first apply to interstate shipments for the protection of health and morals, and the enforcement of their police regulations, without amounting to a regulation of interstate commerce by the States, is absolutely necessary to protect that right of the individual to receive for his own use. If you attempt to give the State the right to make a State law apply before delivery, then, instead of having that right of the individual guaranteed by the Constitution, as was said by the Supreme Court in the case of *Vance v. Vandercook*, you tell him that that right shall be made subject to State law, which may prevent its ever reaching him. This would be

the necessary consequence of saying that an interstate shipment should be subject to State laws before delivery, and that at any time after it reaches the boundary of the State.

In so far as Iowa is concerned, this would be already accomplished by existing laws, because, as I have stated, the requirement of the law of Iowa that a certificate that the consignee has the right to sell must accompany the shipment, absolutely excludes the idea of a shipment for private consumption.

From this statement alone it is apparent that an interstate shipment must continue until actual or constructive delivery to the consignee, and so long as no State proposes to prohibit the right of the individual to drink, no legislation is needed which would apply to a shipment before actual or constructive delivery. When it reaches the consignee, however, he has only the right to consume it, but no right to sell it in violation of the State laws.

The distinction which was drawn by the Supreme Court in the Rhodes case between the time when a State law would apply to an interstate shipment without amounting to a regulation by the State of interstate commerce and the time when its application would amount to a regulation of interstate commerce is necessary, for another reason.

I stated in my former argument that, without appreciating the fact, the complaint of the proponents of this bill was really against the "law of sales," and I cited authorities to show that when a man in the State of Iowa wrote to a firm in New York or Philadelphia, Illinois or Missouri, where the business of manufacturing or selling intoxicating liquors is permitted, and ordered the same sent to him, that that was a sale at the place where the order was received and accepted, and the fact that it was a sale at such place was not affected in any way by the manner of delivery.

There is a right, however, which grows out of such a transaction which belongs to the seller or shipper, and which continues until actual or constructive delivery to the consignee. This is the right of stoppage in transitu, a right which is recognized and in force under both the common and civil law.

Mr. Parsons, in his work on contracts (6th ed.), says:

If a vendor who has consigned goods to a purchaser at a distance finds that the purchaser is insolvent, he may stop the goods at any time before they reach the purchaser. This right is called the right of stoppage in transitu.

The second edition of the American and English Encyclopedia of Law says:

The right of stoppage in transitu is the right of an unpaid seller of merchandise to resume possession thereof after shipment and before actual or constructive delivery to the buyer, or some one claiming under him or for him in some capacity other than that of carrier or middleman for the purpose of securing himself to the extent of the purchase price remaining unpaid against the insolvency of the buyer existing unknown to the seller at the time of the sale or arising thereafter.

This principle clearly indicates that in contemplation of law the transit continues until delivery, and the fact that the transit was an interstate transit can not limit that fact. In every instance the transit must continue until actual or constructive delivery. This is a right which is enforced, not by virtue of the law of the forum, but by virtue of the law of the place of contract.

If, therefore, you attempt to give the State the right to destroy any shipment before delivery to the consignee, actual or constructive, you are attempting to give the State authority to cut out a right which belongs to the citizens of all the other States under the laws of such other States.

Again, the liability of a common carrier continues until delivery to the consignee, though after reasonable notice to the consignee the liability of carrier is transferred into the liability of warehouseman. But this is a legal recognition of the proposition that the transit of goods continues until actual or constructive delivery to the consignee, and that includes storage for a reasonable length of time in the warehouse of the carrier at the point of destination, to give notice to the consignee.

In the case of the *Daniel Ball* (10 Wall., 565) the court said:

In this case it is admitted that the steamer was engaged in shipping and transporting down Grand River goods destined and marked for other States than Michigan and in receiving and transporting by the river goods brought from without its limits; but inasmuch as her agency in the transportation was entirely within the limits of the State, and she did not run in connection with or in continuation of any line of vessels or railway leading to other States, it is contended that she was engaged entirely in domestic commerce. But this conclusion does not follow. So far as she was employed in transporting goods destined for other States, or brought from without the limits of Michigan and destined to places within that State, she was engaged in commerce between the States, and however limited that commerce may have been, she was, so far as it went, subject to legislation of Congress. She was employed as an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from one State to another commerce in that commodity between the States has commenced.

And the same rule applies to the shipment until it reaches delivery; even the express wagon that would deliver the goods from the railway station to the consignee is in that respect engaged in interstate commerce.

Mr. BRANTLEY. Will you read that last clause again?

Mr. HOUGH (reading):

She was employed as an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from one State to another commerce in that commodity between the States has commenced.

The point was made in this case that, inasmuch as the part played in that commerce by that boat was wholly within the State, therefore it was no part of interstate commerce. The rule laid down by the court, as I say, applies at the other end of the shipment as well as at the beginning of the shipment. To continue my quotation:

The fact that several different and independent agencies are employed to transport a commodity, some acting entirely in one State and some acting through two or more States, does in no respect affect the character of the transaction. To the extent to which each agency acts in that transportation, it is subject to the regulation of Congress.

And the doctrine in this case was approved by the Supreme Court in the case of *Norfolk Railroad v. Pennsylvania* (136 U. S., 119).

In the case of *Rhodes v. Iowa* the Supreme Court said:

The fundamental right which the decision in the *Bowman* case held to be protected from the operation of State laws by the Constitution of the United States was the continuity of shipment of goods coming from one State into another from the point of transmission to the point of consignment, and the accomplishment there of the delivery covered by the contract.

That states clearly what the interstate shipment amounts to, where it begins, and where it ends. In the Bowman case there was no question of sale in the original package involved. The contract in such case is, of course, a contract made in another State, under whose laws such a contract is valid, and against the enforcement of which the interstate common carrier could not plead a law of Iowa. His contract—that is, the contract of the common carrier—required him to deliver, and it is enforceable by the laws of the State where the shipment starts.

The Iowa case to which I have referred holds the same thing. In that case, *State against Hanaphy* (117th Iowa Reports, 115), the supreme court of Iowa said:

All these acts—the seeking of the customer by the agent, the soliciting and taking of the order, its transmission to the house in another State, the shipment made, the transportation and delivery to the purchaser in this State—all unite to make up interstate commerce.

Mr. BRANTLEY. In that connection, if it will not interrupt you, was not the law under which Hanaphy was prosecuted merely a statute against the sale of liquor, and they undertook to convict him because he solicited orders for a firm that was out of the State? What I wanted to ask you was this: Whether or not, in your opinion, a State enactment that makes it penal for any person to solicit orders for any person in that State would or would not be constitutional?

Mr. HOUGH. It would be unconstitutional as long as the article is to be regarded as a legitimate article of interstate commerce.

Mr. BRANTLEY. You mean that it would be unconstitutional as applying to—

Mr. HOUGH. To the man who solicits the orders.

Mr. BRANTLEY. For a party outside?

Mr. HOUGH. Yes, sir; for a party outside. It has been decided in a number of cases, and it was recently reaffirmed in the case of *Stockard v. Morgan* (185 U. S., 27), where the Supreme Court says:

All of the cases cited, in the opinion of the court, deny the right of a State to tax people representing owners of property outside of the State for soliciting orders within it for such owners for property to be shipped to people within the State.

Mr. BRANTLEY. The statute I suggested would apply to people within or out of the State, that it should be unlawful within the State to solicit an order for whisky.

Mr. HOUGH. That, so far as it applied to a person outside of the State, would be an attempt on the part of the State to regulate interstate commerce, because the soliciting, as stated in the Iowa case, is a part of interstate commerce, and the soliciting has been declared to be a part of interstate commerce by the Supreme Court in a half a dozen cases. The State of Texas recently undertook to change the law of sale so as to get around that point. It had been held by the supreme court of Texas that the soliciting was a part—that is, the soliciting for a man outside of the State was a part—of interstate commerce; so they passed a law to the effect that if a man solicited an order in County A and the goods were sent pursuant to the order solicited, that it should be considered a sale made within that county. Last month the supreme court of Texas passed on that question, and

they decided that it constituted a sale at the place of shipment, and not at the place of delivery. The court says:

It is insisted that, although this may have been the law prior to the act of the twenty-seventh legislature (p. 262), the effect of that enactment was to change the rule. We reply that it is not competent for the legislature to define a sale and fix its locus regardless of the known rules of law which authorize parties to make their own contracts, making the place of the sale depend on the place where the property is transferred and title passes. Much less is it competent for the legislature to reverse the decisions of the courts upon questions of this character. While that body is supreme in the exercise of its functions, it can no more fix the place of sale of liquors, as between contracting parties, in contravention of the rules of law than it can determine the place of a sale of any other commodity, or that it can define what intoxicating liquors are. If it can do the one, it can do the other, and, as its whim or caprice might suggest, it could define away intoxicating liquors altogether.

Mr. BRANTLEY. Can I ask you this question, then? Is there any way by which a prohibition State can prohibit the business of soliciting orders for the sale of whisky in that State?

Mr. HOUGH. Absolutely none.

Mr. BRANTLEY. It is a part of interstate commerce?

Mr. HOUGH. It is a part of interstate commerce, and until Congress passes a law excluding it from interstate commerce it is protected in that respect as well as in all other respects.

Now, from these different points of view it is apparent that when an interstate shipment has commenced it continues until the shipment reaches the consignee, and this must necessarily be so to sustain the proper relations of all parties under the law.

In determining the character of a statute, we are not to be guided by its framing.

As was said by the Supreme Court in the case of *Reed v. Colorado* (187 U. S., 137):

Certain principles are well settled by the former decisions of this court. One is that the purpose of a statute, in whatever language it may be framed, must be determined by its natural and reasonable effect.

Another is that a State may not by its police regulations, whatever their object, unnecessarily burden foreign or interstate commerce.

Again, the acknowledged police powers of a State can not legitimately be exerted so as to defeat or impair a right secured by the National Constitution any more than to defeat or impair a statute passed by Congress in pursuance of the powers granted to it.

A State law which prohibits or regulates the sale of intoxicating liquors within the State, or which might even prohibit or attempt to prohibit the drinking of such liquors within the State, would be a police regulation; but a State law which would have the effect of interfering in any way with delivery to the consignee of a shipment from a sister State would not be a police regulation, but a regulation of interstate commerce.

Mr. HENRY. Is that the decision, or your argument?

Mr. HOUGH. That is my argument. I state this as the conclusion that I draw from all the decisions, that it would be a regulation of interstate commerce unless it was a legitimate inspection measure, and any Federal legislation which attempts to give to the States the right to apply their laws, other than legitimate inspection measures, to such a shipment prior to such delivery would be attempting to give the States the right to regulate interstate commerce, and that is exactly what this bill attempts to do.

It was furthermore contended that there was no difference between

the proposed legislation and an act of Congress which adopts State procedure for Federal courts in such State in certain cases. This argument, I think, was made by Judge Smith, and the gentleman's reputation as a lawyer is all that entitles this suggestion to serious consideration, for I apprehend that every lawyer present has felt the distinction, even if it has not expressed itself in words in his mind. A fair statement of it would be this: An act of Congress adopting a State procedure is not a delegation of power, because the act is complete in itself, and is not executed by any State agency, whereas an act of Congress purporting to regulate interstate commerce, which requires some action to be done by State agency to determine what such regulation is, is a delegation of the power to the State.

If the premises of Judge Smith were correct in reference to his statement about procedure in Federal courts, it would not have been an adoption of such procedure by Congress, but it would have amounted to a delegation of power to the States to provide or establish such procedure for the Federal courts—a thing which no State has authority to do under its own constitution. His premise, however, was incorrect, because no act of Congress that I am aware of says that the practice in Federal courts shall be governed or controlled by the practice established by the legislatures of the States, but it says that the practice shall conform as nearly as may be, in certain cases, to the practice in similar cases in State courts. This amounts neither to a delegation of authority nor adoption, so far as the Federal action is concerned, but is a direction to the tribunals which Congress has established requiring them to make their rules conform to certain conditions.

Of course, an act of Congress could adopt an act of the legislature of any State, provided it was something which Congress could do under its enumerated powers, and I apprehend that the proper distinction between a case of adoption and one of delegation is that in the first case the act is complete in itself and does not require the activities of the State to give it effect, whereas in the other case the activities of the State agencies are called into requisition in order to determine exactly what shall be the purpose or effect and limitation of the act of Congress.

In referring to the construction given to the Wilson Act by the supreme court of Iowa—and that is what is sought to be accomplished by this proposed bill—the Supreme Court of the United States, in the Rhodes case, said:

But to uphold the meaning of the word "arrival," which is necessary to support the State law, as construed below, forces the conclusion that the act of Congress in question authorized State laws to forbid the bringing into the State at all.

And the construction contended for by the State court in that case is exactly what is sought to be accomplished by the proposed legislation. In respect to that the Supreme Court has said that it would amount to authorizing State laws to forbid the bringing into the State at all. And again, in the same case, the Supreme Court of the United States has said:

We think that, interpreting the statute by the light of all its provisions, it was not intended to and did not cause the power of the State to attach to an

interstate-commerce shipment whilst the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery there to the consignee, and, of course, this conclusion renders it entirely unnecessary to consider whether, if the act of Congress had submitted the right to make interstate-commerce shipments subject to State control, it would be repugnant to the Constitution.

Thus, conceding that if it had had to be construed as applying before delivery, that is exactly what it would have amounted to, and that it would have been repugnant to the Constitution goes without saying, for, as I said before, we do not have to be told whether it will be repugnant to the Constitution for you to delegate authority.

From these two paragraphs it seems to me to be perfectly clear that that court holds the opinion that an act of Congress which attempts to give the State the right to interrupt in any way an interstate shipment before arrival at its destination and delivery to the consignee, actual or constructive, would be submitting the right to a State to regulate an interstate shipment; and what is that, I ask, but delegation?

It seems to me that the trouble with the advocates of this measure is that they have never examined the question except from one standpoint. If they would examine it from all points of a circle around it, they must see the fallacies of their position.

The right of a resident of Iowa, for illustration, to receive an interstate shipment is interminably interwoven with the right of a citizen of any other State to have his shipment to Iowa delivered to the consignee.

Until Congress shall prohibit a shipment from every State this right is guaranteed by the Constitution as well as the laws of the State where the shipper resides, and can be enforced against the common carrier, who is thus put "between the devil and the deep sea." For if he failed to carry out his contract to deliver in accordance with the law of the place where the shipment starts, he can be mulcted in damages, and if he brings it to Iowa in compliance with that contract, without first having received the certificate, which it is impossible for him to get, he is fined and imprisoned. Such would be the effect of the proposed legislation. How, then, can anyone say that you are not attempting to give extraterritorial effect to the laws of Iowa, or any other State to which it may be applied? How, then, can anyone say that you are not attempting to delegate power to a State to regulate and control an interstate shipment?

I am unable to find the least excuse or semblance of justification, either in law or in fact, for the proposed legislation. As I have explained, it is not needed, and it seems to me it violates our sense of propriety and our sense of justice, and it violates the Constitution.

Mr. HOUGH (continuing). In view of these facts and argument, calculated and intended to show that this law as proposed was clearly unconstitutional, I want to call the attention of the committee to two cases which bear upon the second section of Mr. Littlefield's bill with reference to the determination, or the right to determine, where a sale takes place, or the locus of the sale. That question was touched upon, I think, in the case of the American Express Company *v.* The State of Iowa, in 196 U. S., the particular page being 143, where they said that—

Beyond question the contract and sale and shipment were completed in Illinois.

The right of the parties to make a contract in Illinois for the sale and purchase of merchandise, and in so doing to fix by agreement the time when the condition on which the completed title should pass is beyond question.

This same question was before the supreme court, or the appellate court, of Texas, as given in the forty-fifth volume of the Texas Criminal Appeals, in the case of *James v. The State*, page 592. I have not the volume with me, but have an extract from it.

Mr. CLAYTON. What is the case?

Mr. HOUGH. That is the case of *James v. The State*, on page 592 of the forty-fifth volume of the Texas Criminal Appeals. There it appears that the legislature of Texas undertook to do the very thing that this provision in Mr. Littlefield's bill undertakes to do—to determine that the sale shall be considered to have been made at the place where the delivery is made, irrespective of the contract or intent of the parties. On that point the court said:

It is not competent for the legislature to define a sale and fix its locus regardless of the known rule of law which authorizes parties to make their own contracts, making the place of sale dependent on the place where the property is transferred and title passed. Much less is it competent for the legislature to reverse the decision of the court upon questions of this character.

Mr. PALMER. That is a good-sized court down there to beat the legislature. [Laughter.] I thought the court could construe the law and the legislature should make it.

Do you think the Congress has no power to fix the locus where the sale has been made? If the man shipped a package from Kentucky, for example, ordinarily the sale would take place in Kentucky. But you think Congress has no right to say it was made in Iowa in a case of interstate commerce?

Mr. CLAYTON. Where was it intended to be delivered?

Mr. HOUGH. Suppose I am here in the city of Washington and I make a contract with you in the State of Kentucky. Ordinarily the title would pass either here or in the State of Kentucky. I do not think Congress could make a law which says that the title in that case should be considered as having passed in the State of Minnesota.

Mr. PALMER. Why? Give your reasons for it.

Mr. HOUGH. I say I am only giving you these few authorities on that point.

Mr. PALMER. They do not seem to prove much.

Mr. HOUGH. The Supreme Court of the United States says they have the right to determine by contract that question. I will answer any questions on that point that Mr. Palmer wants to ask, but I don't want the few minutes allotted to me to be consumed by questions.

Mr. CLAYTON. That was in the absence of a statute fixing any particular locus. That left it entirely with the contract, and adjudicated it under the contract without reference to any statute undertaking to define the locus of delivery.

Mr. HOUGH. That is true in the Supreme Court case, but there are certain well-known principles of law that have to be observed by legislative bodies as well as by courts, and I think that is the idea expressed in the Texas decision. I do not think they have the right to do that.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CLAYTON. We interrupted him, Mr. Chairman.

Mr. HOUGH. I did not have all the time I was allotted. I will not be able to come back this afternoon.

The CHAIRMAN. Why?

Mr. HOUGH. I have another appointment—with the Commissioner of Internal Revenue.

The CHAIRMAN. Mr. Palmer insists upon our observing the time for taking recess, and the committee has in fact been pounding somewhat steadily, Mr. Hough, and they have something to do. [Laughter.]

Mr. HOUGH. I appreciate that, Mr. Chairman. But I have come from St. Louis expecting to be heard here, having been invited to be here, and I was not heard when I got here. For that reason, Mr. Chairman, I would ask that I may abridge this statement and incorporate the argument I originally made.

Mr. PALMER. I move, Mr. Chairman, that Mr. Hough's argument be printed.

Mr. HOUGH. May I say one more word?

Mr. PALMER. A thousand, if you wish.

Mr. HOUGH. I listened to the argument this morning, and it seems to be considered by everybody that the original bill is unconstitutional. The Littlefield bill is substantially the same. Since the amendment reported by the committee is designed to protect a constitutional right, and that amendment is not satisfactory to the Prohibitionists, and the bill as drafted was not satisfactory to the committee or the other side, the only thing for the committee to do is to report nothing. [Laughter.]

(Thereupon, at 12.30 o'clock p. m., a recess was taken until 2 o'clock p. m.)

AFTERNOON SESSION.

The committee met at 2 o'clock p. m., pursuant to the taking of recess.

STATEMENT OF MR. SIMON WOLF, OF WASHINGTON, D. C.

Mr. WOLF. Mr. Chairman and gentlemen, although by birth a German, by faith a Jew, and officially the representative of the Union of American Hebrew Congregations for the past twenty-five years in Washington, I appear in neither of these capacities, but simply and purely as an American citizen who has but one ambition, and that is to see that the liberties for which my ancestors and my countrymen fought in common with all faiths shall be preserved intact for all time to come.

For the past forty years (I have been a resident of this city for forty-four years) I have appeared time and again before committees of this character on similar propositions, have fought them as far as my humble abilities would allow, not in opposition to any form of religion, to any form of politics, but simply from the standpoint of American citizenship; and it is not for the first time that I have heard the same arguments that have been advanced this morning on the line of personal liberty, for I care not how much the distinguished man who had the honor of speaking here this morning may claim

that this bill involves no question of prohibition or personal liberty, nevertheless there is nothing else in it, absolutely nothing else.

Representing the Anti-Saloon League of the United States, it would be impertinence on our part to think for a moment these good women and good men, actuated by the purest motives from their standpoint, would be here advocating a bill unless it involved the question of prohibition; and I have been admonished by my reading of history and the classics that when the Greeks come bearing gifts, beware. The very fact that the gentleman who has claimed that there was nothing else in this but law, that there was no desire to close a single saloon or to prohibit anything, is one of the fundamental reasons why I have asked the privilege of speaking at all. It is simply trying to gain by indirection what can not be gained directly. In short, the Congress of the United States in its representative character, representing all the interests of the whole country, are asked to do what has failed to be accomplished by the respective States. It is in absolute line, in accord with that spirit which has actuated a certain portion of our population from the time of the founding of the Republic.

As James Russell Lowell said, the Puritans landed on Plymouth Rock, fell on their knees, and then on the aborigines, and they have been keeping it up magnificently ever since. It is the same spirit that actuated the good preachers from the Northwest that came to Abraham Lincoln and asked the resignation of Gen. U. S. Grant because he drank. And you know the memorable reply of the sainted martyr. He said, "Tell me where he bought his liquor and I will send some to the other generals of the Army." And it is the same spirit that has prevailed to have the canteen abolished in the Army, and never in the history of the American Republic have there been more desertions and more demoralization in the Army of our country than since the abolition of the canteen.

It is the same spirit that wants the introduction of God into the Constitution, the same spirit that declares this is a Christian Government from the sectarian standpoint; it is the same spirit that wants to introduce religion into the public schools; it is the same spirit that wishes constantly to interfere in the personal rights and privileges of the American citizen from a narrow and sectarian standpoint. I am not arguing, as I said, against religion; on the contrary, I am in favor of it. Belonging to a race that has never to my recollection produced any drunkards, and, as Bishop Satterlee said last year in a public address, the Jews furnish no divorces; they furnish an ideal moral home life. I think I can speak by the card that all that is wanted in this country is more liberal doctrine from the pulpit, more liberal home moral education, and then the question of prohibition will settle itself.

As to the law, it would be presumptuous in me, even although I have been practicing law ever since 1861—in the Supreme Court and all the courts of the District of Columbia—it would be presumptuous in me to instruct the Judiciary Committee on the House side of their rights and their functions in regard to this bill. I believe that Congress has no right from any constitutional or any delegated authority to prohibit the commerce of this country. Does anyone for a moment presume that if I to-day buy in the city of Washing-

ton a case of wine or a case of beer and send it to Kansas or Missouri, where I may reside, that by virtue of a law to be enacted there I am prevented from enjoying the inalienable right of an American citizen to eat or drink what God has ordained me to? Why, it is absurd on its very face. And if the law is unconstitutional, the law to be enacted, what is the use of wasting our time? You simply degrade and you jeopardize the very functions for which you are congregated to do your duty as representatives of the American people.

I have found in my experience at home and abroad (I have had the good fortune to represent our country in the land of the Pharaohs) that prohibition laws to prevent crime do not prohibit or prevent. You can enact laws to punish, but you can not enact laws to prevent. You simply instill and create into the human being a system of hypocrisy that is abhorrent to every man and woman of sense and respectability.

The chairman this morning said that some one appeared here and said that he saw more drunken men in the State of Maine than possibly in some other States. I have seen the same condition. Some few years ago I went to Portland to attend a national conference, and when I asked for a drink—and I do drink, but, thank God, I never was drunk; I am temperate in that direction, as I try to be in all other directions—I found more speakeasies in the city of Portland than I had ever seen anywhere else before.

Therefore this whole question is not one, as has been claimed, of pure construction of law or of amendment or of constitutional prerogatives. It is the old question, pure and simple, between those who wish to lead a moral, temperate life, irrespective of law, and those who wish to enforce that by absolute prohibition. There is no use in closing our eyes to the fact that the church organizations and the auxiliary organizations of the churches of the United States are banded together for a common purpose, and we might as well meet the issue first as last. And therefore, representing, as I do, as I have said, not any particular organization, certainly representing no brewer or any liquor establishment, because I am simply here in the capacity of that broad ægis under which all Americans sail—citizenship of our common country—I admonish and beg this committee to heed wisely before legislating in any direction which would be used as a precedent by the State organizations or State legislatures to deprive men of that to which they are entitled.

I thank you, one and all.

Mr. NICHOLSON. I would like to say this: We have two of the Members of the House here who would like to be heard for this bill. We want to try to serve their convenience, because they are very busy. Judge Smith, of Iowa, is here, and can only remain a few minutes, and I would like him to be heard.

**STATEMENT OF HON. WALTER I. SMITH, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF IOWA.**

Mr. SMITH, of Iowa. Mr. Chairman and gentlemen, in view of the fact that I have twice appeared before this committee in past years advocating the report of similar measures to those now under consideration, I want to be very brief this afternoon.

I am not able to agree with those good people who appear here to advocate this as a temperance measure or as a prohibition measure. It has nothing to do with temperance or prohibition except in a remote way. I certainly do not agree with those who are here opposing this measure. This measure is simply a measure to return to us that self-government which for fifty years we enjoyed under the decisions of the Supreme Court of the United States. The Supreme Court of the United States held early in the history of this prohibitory legislation that the State had the power to prohibit the sale of liquors there, whether in original packages or otherwise. For fifty years that opinion stood unchanged.

After the lapse of fifty years the Supreme Court of the United States (and far be it from me to criticise it) determined that the former holding was erroneous, that the Constitution of the United States, by conferring upon Congress control of her interstate commerce, had necessarily deprived the States of authority to prohibit the sale of liquors within the States in original packages. The result was the immediate establishment, in defiance of the popular will, in every community in the dry States and dry territory of original-package houses under the Wilson law. If the Wilson law had not received the peculiar construction which it did receive in the Rhodes case nobody would be here to harass this committee further upon this subject.

When the Supreme Court announced that under the Wilson law liquors did not arrive until they were delivered to the consignee no great harm was done and would not have been done if that decision had not at once been grossly abused. I have at my room a letter received within a week from a gentleman stating that at one point in Iowa two dozen jugs were then lying in the station addressed to X or some letter, and that anyone who would go and pay the express charges and the purchase price could take those liquors out. They were thus being retailed in defiance of our laws over the express counter.

Now, it is not a question of whether we are for prohibition or against it; it is a question of whether the people in the respective portions of the United States are entitled to govern themselves; that is all there is in this question. I remember that in one of the national conventions when a question arose as to the manner of selection of the delegation from Illinois a distinguished citizen of Illinois, in protesting against imposing upon the people of Illinois the methods employed in the selection of delegates in Massachusetts, commented upon the fact that the clothes of the people of Massachusetts might be of a better cut than the clothes of the people of Illinois, but they didn't want the clothes of the people of Massachusetts put upon the people of Illinois because they would not fit them so well. So it may be that other regions have better laws than we have in Iowa; other people may be wiser than we are in Iowa; but I don't care to have their laws imposed upon us; our laws suit us.

We would like to have the privilege of regulating our own purely local and domestic laws and not have somebody who doesn't dwell in our midst imposing upon us their laws that we do not approve of. That is all there is here. I repudiate every remark made in support of this bill that advocates it as a temperance measure. I repudiate every remark made in support of this bill that advocates it as a

prohibition measure. I repudiate everything that is said along those lines in support of this bill so far as I am personally concerned. I am here to contend for the right of my people to govern themselves as they see fit. We don't want to govern any place else outside of our communities; we do want to govern our own communities. We want to govern them according to our notions and our ideas. We may not be as bright as people elsewhere; we may not know as well what laws are wise; we may not have as much talent or as much of judgment, but we do know what we want, and we don't like to have somebody else imposing laws in reference to our customs upon us against our consent.

We have learned that we can govern the Philippines without their consent, we can govern people outside of the limits of the United States without their consent, but we still do cling to the old notion that here at home communities ought to be entitled to govern themselves, and that the United States Government ought not to thrust upon and force upon the people of any State a traffic that they do not want conducted there.

Mr. BARTHOLDT. Will you permit a question?

Mr. SMITH, of Iowa. Yes, sir; as far as I am concerned.

Mr. BARTHOLDT. I am not a member of the committee.

The CHAIRMAN. Is there any objection?

Mr. CLAYTON. There is no objection.

Mr. BARTHOLDT. I wish to ask my friend, Mr. Smith, whether the State of Iowa, the State authorities, are enforcing their prohibitory law.

Mr. SMITH, of Iowa. I will say that in my judgment there is not a law upon the statute books more rigidly enforced than the Iowa prohibitory liquor law.

Mr. BARTHOLDT. Is it true that brewers, distillers, and saloons are running open in the State of Iowa?

Mr. SMITH, of Iowa. Nowhere except where authorized by law. I will say, as the gentleman has asked me the question, that I have the honor to represent on the floor of this House nine counties in the State of Iowa. In one of those counties the so-called "mulet law" is in force, which is an authorization for the sale of liquor.

Mr. BARTHOLDT. Which is an immoral compromise between the State and the violators of the law?

Mr. SMITH, of Iowa. I am not here to discuss with my good friend from Missouri the immorality of the laws of Iowa. We would like to make our own laws, without the interference of people who do not live in our midst. You don't approve of our laws; well and good. I have no criticism upon you because you do not believe in our laws or because you have different laws. You ought to have as large charity. These gentlemen—not Mr. Bartholdt, because I know he is too broad for that—but these gentlemen talking against such legislation are all the time talking about hypocrisy and bigotry, and yet they are determined to say not only what the laws shall be in their community, but to come into my community and dictate to us what our laws shall be.

Mr. BARTHOLDT. But my point is this: That before you come to Congress to aid you in the enforcement of your local—

Mr. SMITH, of Iowa. I am not asking any aid from Congress—we are not asking any aid from Congress—

Mr. BARTHOLDT (continuing). You should come here with clean hands. You haven't got clean hands.

Mr. SMITH, of Iowa. You say we haven't got clean hands. You are the one that is judging as to other people. I am not reflecting upon you because you and your people don't agree with me and my people. I am willing to credit you with all sincerity, with all honesty, with all of uprightness, with all of high purpose; but when I want in my community to do what I am willing that you should do in yours—make your own laws and enforce them—I am to be told that my people are a corrupt people, a demoralized people, a people that are not honest, a people that are not sincere, a people who are hypocritical; and that is not true.

Mr. BARTHOLDT. If a saloon runs open in Iowa, that is in violation of the State laws—

Mr. SMITH, of Iowa. It is not.

Mr. BARTHOLDT. In other words, you have not exhausted your State powers.

Mr. SMITH, of Iowa. It is not true; I beg your pardon, you are in error. The truth is, I was about to say, in the nine counties in my Congressional district there is not a single saloon running outside of Pottawattamie County, where the mulct law is in force—and they are to run in Montgomery County—there has not been a saloon running for more than twenty years. I sat upon the bench in that county for ten years myself, and know whereof I speak. The people may be foolish, they may not know what is best for them, they may be misguided, but they would like to govern themselves unhampered in a purely domestic matter like this, by the laws and the Constitution of the United States imposing upon them this traffic against their will. That is all. We would like in our humble way to have the same rights you have got.

Mr. SMITH, of Kentucky. When you undertake to prevent the citizen from another State selling and shipping his product into your State, are not you not only demanding the right of local self-government, but the right to govern somebody outside your State?

Mr. SMITH, of Iowa. Not at all. For years the Supreme Court of the United States said that you had nothing to do with them—

Mr. SMITH, of Kentucky. But it does not say it now.

Mr. SMITH, of Iowa. The Supreme Court says now that without an act of Congress we can not do it, but if you do not pass this act of Congress you affirmatively impose this traffic on communities that don't want it.

Mr. SMITH, of Kentucky. You know that the power of regulating interstate commerce lies with the Congress of the United States?

Mr. SMITH, of Iowa. Yes, sir.

Mr. SMITH, of Kentucky. And until Congress takes the hands off the Federal Government off the State can not regulate it?

Mr. SMITH, of Iowa. That is true—

Mr. SMITH, of Kentucky. And you are asking Congress to take its hands off—

Mr. SMITH, of Iowa. And let us govern ourselves.

Mr. SMITH, of Kentucky. To prevent the people from outside engaging in interstate commerce in that particular article?

Mr. SMITH, of Iowa. No; not real interstate commerce. The sales are made right in Iowa over the counters of the express companies,

two of them having been enjoined by the supreme court of Iowa from engaging in that business.

Mr. BARTHOLDT. And you have opened saloons——

Mr. SMITH, of Iowa. Not except where they are opened by law.

Mr. SMITH, of Kentucky. But you would cut off by this legislation the right of a citizen in Illinois, for instance, to sell and ship his product into your State?

Mr. SMITH, of Iowa. No; we cut off his power to ship and sell it; there is the difference. You said we cut off his power to sell and ship it. We won't do that, but we do cut off his power to ship and sell it. We want to get this thing in the right order.

Mr. SMITH, of Kentucky. It may be that in a good many cases—I am not disputing on that particular proposition—but, on the other hand, I take it that there is a good deal that is sold and shipped, and you would cut that off along with the other.

Mr. SMITH, of Iowa. Personally, I have never been strenuous upon that subject. I think you ought to leave us to govern ourselves as to whether even the liquor shall be drunk in Iowa or not. The State of Indiana has recently passed a law prohibiting the smoking of cigarettes. I think that is a radical law, but far be it from me to say that the people of Indiana shall not govern themselves in that regard if they see fit. The people of Nebraska have recently passed a law making it a criminal offense to wrap a cigarette or to smoke a cigarette.

Mr. PARKER. In the streets, I suppose?

Mr. SMITH, of Iowa. Anywhere. Personally I think that is a piece of very radical legislation, but living, as I do, without their borders I have no purpose to dictate what the laws or the practices shall be either in Indiana or Nebraska.

Mr. PARKER. Mr. Smith, I don't know that it is material, but I would like to know how you manage to get the mullet law in Iowa. I thought the Constitution prohibited it.

Mr. SMITH, of Iowa. No; you are in error about that; there is no constitutional provision on the subject.

Mr. PARKER. Was there not one passed?

Mr. SMITH, of Iowa. There was one voted for, but owing to the lack of properly entering it upon the journal it was held to be illegal by the Supreme Court.

Mr. PARKER. So the legislature has full power?

Mr. SMITH, of Iowa. The legislature has full power, and the people of Iowa have had a prohibitory law since 1851. For over fifty years these "stupid" people have adhered to this policy.

Mr. PARKER. Let me ask you another question, and that is whether the real difficulty in Iowa does not reside altogether in C. O. D. shipments?

Mr. SMITH, of Iowa. No; it resides in C. O. D. shipments, but not in genuine C. O. D. shipments.

Mr. PARKER. If you were to cut off C. O. D. shipments and make it illegal to deliver liquor C. O. D., would you not hit all the blind tigers——

Mr. SMITH, of Iowa. There are no blind tigers there.

Mr. PARKER. I mean the express companies selling goods to A, B, or C.

Mr. SMITH, of Iowa. I should think so; yes.

Mr. PARKER. And if you would limit the law to that you would probably meet the difficulties that now exist?

Mr. SMITH, of Iowa. I think so, in my judgment; but I am not here to concede that the law ought to be less than to give to the people of every State the absolute right to control their own domestic affairs upon this subject.

Mr. PARKER. Then ought not the law to provide that all articles shipped from one State to another ought to be subject, instead of confining it to liquor?

Mr. SMITH, of Iowa. When the Wilson bill passed the Senate, this committee reported as a substitute the bill conferring upon the States police power over every article of interstate commerce, and that bill, I say, ought to have passed; yes. Your committee reported it, and I say it ought to have passed, and it did pass the House of Representatives. That gave every State, in the exercise of its police power, control over all kinds of interstate shipments. I say that if you ship coal oil into my State and that coal oil is of such a low test that it is dangerous to the lives of our people, or that we think so, we ought to be entitled to prohibit the sale of that coal oil in our State.

Mr. PARKER. Are you not able to do that now?

Mr. SMITH, of Iowa. No, sir.

Mr. PARKER. I always supposed that dynamite and explosives and things of that sort, and cattle that had disease, and goods which of themselves were dangerous, would always be subject to police power, wherever they were found.

Mr. SMITH, of Iowa. My understanding is that cattle, being under the quarantine law, can perhaps be excluded from the State; but the very point decided in the *Leisey v. Hardin* case was that the police power did not extend to the prohibition of the sale of goods in original packages, the subjects of interstate commerce.

Mr. PARKER. I am not speaking of the sale; I am talking of the transporting, even of goods which are dangerous in themselves, like dynamite.

Mr. SMITH, of Iowa. Suppose they are not dangerous from their transportation?

Mr. PARKER. The coal oil was dangerous.

Mr. SMITH, of Iowa. Perhaps not; perhaps not in the way in which it is handled in cold-steel tanks; but I suppose it is dangerous in the household, I say the people ought to have a right to prohibit its sale, and that is what the House of Representatives said in the Fifty-first Congress, but the Senate refused, for reasons that may perhaps be surmised by some of us, to consent to the passage of a bill that extended not only to liquors, but other commodities, and we were obliged to accept a bill which applied only to liquors.

Mr. BARTHOLDT. Iowa is in favor of prohibition?

Mr. SMITH, of Iowa. Part of it is.

Mr. BARTHOLDT. And yet the legislature passes what is termed the mullet law?

Mr. SMITH, of Iowa. Yes, sir.

Mr. BARTHOLDT. Now, my point is this. Before you come here to Congress to invoke the aid of the National Legislature to suppress that traffic the legislature of Iowa itself has it in its power to suppress that traffic within its own boundary lines, and yet they have passed the mullet law.

Mr. SMITH, of Iowa. The gentleman is mistaken in numerous points. In the first place, the people of Iowa believe what I am contending for—in the right of local self-government. If the city of Davenport is in favor of the sale of liquors, the people of Iowa allow liquors to be sold there under the mulct law. If the people of Page County are bitterly hostile to the sale of liquors we refuse to let them be sold there.

Now, these liquors are not shipped from Davenport; we have suppressed the shipping of liquors from one town in Iowa where they are sold to the dry communities in Iowa and offering them for sale there over the express companies' counties. We are not asking the aid of Congress to enable us to enforce the laws of Iowa. By a construction the Supreme Court of the United States held that the Constitution gave a right to those sending liquor into Iowa to violate the laws of Iowa until Congress consented to our laws. We will enforce our laws ourselves, we ask you to take your hands off and let us alone to enforce our own laws.

Mr. PARKER. I am trying to get at a few facts; I don't know about these laws. Do these mulct laws allow liquors to be shipped from outside the State into the mulct counties, or do they only allow goods to be manufactured in those counties and sold?

Mr. SMITH, of Iowa. The liquors are shipped in. The law does not specifically provide as to that—

Mr. PARKER. Is not the law a law providing for the sale and manufacture, but not providing for the shipments from other States into those counties?

Mr. SMITH, of Iowa. The law does not ordinarily provide for the manufacture of liquors in counties where the mulct law is enforced.

Mr. PARKER. What does it provide for?

Mr. SMITH, of Iowa. For the sale of liquors.

Mr. PARKER. It provides for the sale of liquors in those counties?

Mr. SMITH, of Iowa. Yes, sir.

Mr. PARKER. But there are other laws in Iowa which prohibit the transportation of liquor by any railroad, I understand?

Mr. SMITH, of Iowa. Yes; a local shipment within the State. We can not prohibit interstate shipments, of course, and we are not seeking to prohibit interstate shipments by this law.

Mr. PARKER. By this law interstate shipments would be prohibited?

Mr. SMITH, of Iowa. Oh, no.

Mr. PARKER. The words are pretty strong.

Mr. SMITH, of Iowa. No. The language does not prohibit—

Mr. PARKER. I am discussing what the Iowa law is. Does it not prohibit carrying any liquors on railroad trains?

Mr. SMITH, of Iowa. Not on interstate shipments.

Mr. PARKER. And do the mulct laws except shipments of that sort?

Mr. SMITH, of Iowa. I would not be able to answer that as to whether they expressly except it or not. I have not seen the law, probably, in ten years. I am somewhat familiar with it, but I don't believe I have read it for ten years; but the mulct law does not seek to build up the Iowa liquor manufacturers, if that is what the gentleman means.

Mr. PARKER. I was trying to get at whether this law subjected all interstate shipments to the police power of the State; whether the

general laws of Iowa with the mulct laws would take hold of this liquor if it was shipped into mulct counties?

Mr. SMITH, of Iowa. I think not.

Mr. PARKER. My impression was the other way, from a casual examination.

Mr. SMITH, of Iowa. I grant you that the question has never been so clearly presented as to have had that definitely settled.

I have always planted myself on the single proposition that all we want you to do is to let us govern ourselves, and we are willing that Mr. Bartholdt and all his constituents should govern themselves. We do think that other States ought not to insist upon imposing their social notions upon us any more than we try to impose our social notions upon them, and if we can only agree that each community shall govern itself in this regard and have the right to govern itself we ought to be able to live together in peace and charity, not calling each other bigots or anything of that sort, but just conceding that there is a difference of opinion in different parts of the country on this great subject, and let every community govern itself according to the moral sense of that community, and no other community attempt to impose its moral ideas upon us. That is all we ask. We don't ask Congress to interfere and help us carry out our laws; we ask you to quit interfering in the carrying out of our laws, and we will take care of ourselves, as we have always been able to do.

Mr. PALMER. You remember last year we reported a bill, which I supposed was satisfactory to everybody, which did not pass. It contained this provision:

Not interfere with the delivery in the State or Territory of any bona fide interstate-commerce shipment of liquor or liquids intended solely for the personal use of the original consignee.

Mr. SMITH, of Iowa. I would much prefer seeing this bill passed with this clause in it, if it was a question of passing it that way or not passing it at all, I mean; but don't see why you should want this clause in. If the people of Indiana are narrow enough to prohibit the smoking of cigarettes by anyone within the State, I don't see why I should insist upon the inalienable rights of some citizens of Indiana to smoke cigarettes.

Can we not let the States take care of their own business and transact their own affairs in these matters? That is the same proposition; that is why I mentioned the question of the law against cigarette smoking. We will next hear that we have to have an act of Congress to protect the people of Nebraska in their inalienable right to smoke cigarettes—that is, that you must put in a clause that they can smoke cigarettes themselves and can bring cigarettes in to smoke themselves. Have we got to rush to the support and defense of the good people of Iowa, who can not take care of the themselves, to preserve to them the right to get liquor to drink?

Mr. PALMER. Do you concede that the citizens of Iowa have a right to buy liquor where they please and take it in there and drink it?

Mr. SMITH, of Iowa. I don't believe a man has the constitutional right to drink liquor at all, as far as that is concerned. I think the legislature has as much right to make it an offense to drink liquor as to make it an offense to smoke cigarettes. The Supreme Court has never held that it was unconstitutional to prevent a man from drinking.

Mr. CLAYTON. Have you read Vance against Vandercook?

Mr. SMITH, of Iowa. I have.

Mr. CLAYTON. Don't you think that covers that?

Mr. SMITH, of Iowa. I do not so regard it.

Mr. PALMER. This right to ship in liquor is derived from the Constitution of the United States.

Mr. SMITH, of Iowa. My dear sir, the right to ship liquors and the right to use liquors are two entirely different things. The right to ship liquor is an act of interstate commerce and protected by the Constitution; the right to drink liquor is not an act of interstate commerce and is not protected by the Constitution, unless a man gets astride the line.

Mr. PALMER. You haven't any law in Iowa now prohibiting a man from drinking liquor?

Mr. SMITH, of Iowa. No; but there is a law in Indiana against anybody smoking cigarettes. Are you going to rush in to get a saving clause to protect the citizens of Indiana in their inalienable right to smoke cigarettes?

Mr. PALMER. When we come to that ditch we will get over it.

Mr. SMITH, of Iowa. Is it not the same thing?

Mr. PALMER. I won't say what I think of the Indiana law, because it would not be polite.

Mr. SMITH, of Iowa. Will you state what you think of the legal difference between a law against smoking cigarettes and a law against drinking liquor?

Mr. PALMER. I think it is worse to smoke cigarettes than it is to drink liquor.

Mr. SMITH, of Iowa. I didn't ask that. The truth is there is no distinction, and you can not find a line anywhere, I think, to say that a law prohibiting people from drinking liquor is not valid. The Supreme Court did hold that there existed a constitutional right to sell it in unbroken packages, but if the law provides that liquor shall not be drunk in a State of course that decision would not cover the drinking of the liquor.

Mr. PALMER. It would be a pretty poor right—the right to ship it in—if he didn't have the right to drink it after he got it in.

Mr. SMITH, of Iowa. May not the Constitution of the United States protect one right and not the other; does not the Constitution now protect the right to ship it in but not protect the right to sell it in broken packages?

Mr. PALMER. I think the right to ship it in implies the right to use it.

Mr. SMITH, of Iowa. Under the Wilson law now we have a right to prohibit a sale—that is, sales in the ordinary course of trade in the State in the original packages.

Mr. PALMER. Would you be satisfied with the bill reported unanimously last year?

Mr. SMITH, of Iowa. We are dissatisfied in one sense, but we were glad to get a report, believing it was better than nothing at all. We were not thoroughly satisfied.

Mr. PALMER. Neither was the other side, and that would be evidence, perhaps, that it was pretty near right.

Mr. SMITH, of Iowa. Well, it may be evidence that it was nearly

right; it sometimes is. All we want, however, and all we have ever contended for is that you are not the guardians and the people of the United States are not guardians of the habits of the people of Iowa—

Mr. PALMER. We are guardians of the Constitution.

Mr. SMITH, of Iowa. Oh, yes; guardians of the Constitution, but, as I understand, you are advocating it because it is necessary to make the law constitutional; but you want to insist upon our people having the high privilege of bringing in liquors for their own use, and we think we are able to take care of ourselves in that respect.

That is all I have to say, Mr. Chairman, and I thank you.

(Informal discussion followed about the method of procedure, and it was suggested that Mr. Crain be given twenty minutes.)

Mr. ROBERT CRAIN. Mr. Chairman, I would like to say to the committee that I have taken occasion to prepare a brief on these several bills. I believe it is conceded that there are some legal questions involved in these bills that neither Mr. Hough or myself, representing the legal side of this question, have had any opportunity of presenting before this committee at this present session, and I don't care to commence an argument on a question of this kind for fifteen minutes or twenty minutes or any other specified time in minutes. Therefore I would like to have an opportunity, if the committee will grant me that privilege, of presenting the legal reasons why in our judgment this bill should not be enacted.

Mr. PALMER. Is not this your brief?

Mr. CRAIN. Yes; and then I filed a supplementary brief on the C. O. D. bills. What we would like to do especially is to controvert the position that Judge Smith has taken on this subject and which seems to be the prevailing idea with many.

Mr. CLAYTON. Let Mr. Bennett be heard and then we can hear Mr. Crain.

STATEMENT OF HON. JOSEPH B. BENNETT, A MEMBER OF CONGRESS FROM THE STATE OF NEW YORK.

Mr. BENNETT. Mr. Chairman, I do not come from a prohibition State. The question is, to a very large degree at least, a financial one with us. We adopted the policy some years since of raising all our State revenues from indirect taxation, and we have a relatively high license with local-option features. The consequence was that last year the liquor traffic in our State contributed \$18,000,000 toward the support of the government of our State and the municipalities. One-half went to the State and one-half to the various localities.

There are about 250 no-license towns out of our nine-hundred-odd towns—practically a quarter of the rural population of the State. This bill, as I have read it, seeks to give the State control of these shipments as soon as they cross the State line, and that is important to a high-license State, because if we have not that control in the State, if we allow these places to be open just over the borders in the dry towns, we, as a State, lose just that much revenue. As one of the representatives of New York, I do not regard this at all as a temperance measure; in fact, I don't think it would decrease the sale of liquor in the State of New York to the extent of a glass; but as an

attack, indirect, of course, upon our revenues the continuance of the system, which has just started in our State, of these C. O. D. shipments into dry towns is something we very seriously object to.

STATEMENT OF MR. KARL R. ABRENDT, OF BALTIMORE.

Mr. ABRENDT. Mr. Chairman and gentlemen of the committee, I represent the German Turners' Organization, of Maryland, and also this morning I have been in receipt of a communication from the Independent Citizens' Union, representing 64 different organizations, who all wish to be placed on record as opposing this measure.

I will not tire you out with any long argument after so many excellent speeches, but simply wish to file our protest against this proposed legislation.

INDEPENDENT CITIZENS' UNION OF MARYLAND,
February 19, 1906.

*To the honorable the members of the Judiciary Committee,
House of Representatives.*

GENTLEMEN: Some two years ago the Independent Citizens' Union, for itself and many citizens of Maryland, protested against the passage of the Hepburn-Dolliver bill, not only by petition but also in person.

Together with others from various States of our Union representing civic and patriotic organizations of German-Americans our representatives appeared and stated the reason of our opposition to this bill. Later, at another meeting of your honorable committee, they again appeared, but received no opportunity to speak. They then sent in a memorial setting forth some of the motives actuating their opposition to the measure, and took occasion to answer some remarks made by the speaker at the previous meeting of the committee. (We herewith attach a copy thereof, it being as applicable to-day as then.)

Our members are busy people. We have no paid agents or salaried officials, who can devote their time to agitate against such measures as this bill before your honorable body, and we rely upon our Representatives in Congress to deal sanely with such when they come up.

Should they fail to do so, we have the remedy in our own hands for application when they again come up for reelection; for, based upon our election figures, we can safely assert that for every voter in the State of Maryland favoring sumptuary and prohibitive laws there are ten voters who believe in the rights of man and personal liberty. And we believe that there are enough such voters in every State to effectually influence the election results.

Respectfully submitted.

THE INDEPENDENT CITIZENS' UNION OF MARYLAND.

STATEMENT OF MR. KARL A. M. SCHLOTZ, OF BALTIMORE, MD.

As representing the Independent Citizens' Union of Maryland (State branch of the national German-American Alliance), Mr. Fred W. Wehrenberg and I appeared at the meeting of your body on Wednesday, the 2d instant, but did not have a chance to be heard that day. I take this opportunity of pleading against the Hepburn-Dolliver bill as it now appears before your committee. As it seems to us Iowa has added a now commandment to the other ten, practically to the following effect: "Thou shalt not drink liquors, either vinous or malt; naught but water shalt thou drink, this under penalty of mortal damnation and imprisonment." Under the Iowa statute, anyone living in small parts inland is absolutely prohibited from using any malt or vinous liquors for domestic purposes, and will be prevented by the passage of the act before you from even importing

the same. Under the exercise of this "police power" the good Lord would have been guilty equally with Noah in the matter that led to Ham's tribulations.

Or had St. Paul written to Timothy, and the latter then resident in Iowa, not only would the latter perhaps have been subject to seizure, but he, Paul, upon "arrival" in the State would have been subject to fine and imprisonment for "prescribing liquors without license."

As it is, even the legislature man's after-pocket flask is not exempt from seizure, and he liable to thirty days' retreat, there in lenten penitence to commune upon the iniquity of the world; or, should he appeal, the court will, in all probability, shrug its shoulders, and say: "That with the wisdom and propriety of the act it has nothing to do, for it must be presumed that the legislature knew what it was doing."

The inability of the State to strictly enforce this new commandment is avowedly confessed by its present appeal for aid to Congress. It asks of Congress a most extraordinary privilege. A privilege dangerous to grant. It virtually seeks permission for its police to enter any train at the border of the State and then inquisitorially and without further warrant to proceed in re and in rem to search for and confiscate the contraband liquor.

This very condition is predicted by the Supreme Court in *Rhodes v. Iowa* (170 U. S. Rep., 412, 422), citing *Leisy v. Harding*:

If the construction claimed be upheld, it would be in the power of each State to compel every interstate commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise within the character named and covered by the inhibition of a State statute.

To-day the inhibited merchandise is liquor; but who can anticipate what it may be in the near future? With an increase of persecution in Russia, might not it chance that those who believe the eating of pork to be sinful and harmful and so dangerous to health and morals be in the majority, and then, purely as a "police regulation," prohibit the raising, importation, or eating of swine's flesh within the State under penalty akin to that applicable to liquor? Wherein would be the difference?

If Congress can pass one law, virtually granting the right to search passengers and luggage, can it not also, in fact, ought it not, to be consistent, enact a law granting the State of Iowa and others the right to open any letter mailed in or to that State which, in the opinion of its police, contains an order for or notice of shipment of liquor? If the one law be proper, why not the other?

Legislators who neither accept themselves nor their trust seriously may enact "laws" which they never expect nor intend to be enforced; hence the general contempt and disregard in which such laws are held, and the little respect for legislatures and their members.

Congress can not afford to mire its reputation and weaken the general respect in which it is held by resorting to such "four-flushing" tactics.

Apropos of the arguments made before your committee on the 2d instant, I would request the privilege of saying a few words.

A Reverend Mr. Craft (such I believe to be the name) unhesitatingly asserted that he represented 28,000,000 of the people of the

United States. It is just upon such cheap assurances as this that the foes of personal liberty have traded all along. Not only did he collectively "corner" all protestant confessions, but ended by boldly pledging the Catholic Church (Roman) as in favor of the measure before the committee. Doctor Pangloss, Ph. D. (and also an A. S. S.), was certainly never more forward:

Another "trump" was a batch of hundreds (or possibly "thousands") of letters from German-Americans who "did not sympathize" with the efforts of the National German-American Alliance in fighting the battle of personal liberty. All these seemed to be from the cross corners and other unknown places. Particularly did he dwell upon a printer—name unpronounceable to the reverend speaker. We could add to the strength of this by admitting that, even right here in Maryland, there are hundreds of thousands of similar German-Americans who are indifferent to the actions of the National Alliance—but they repose in graveyards and other equally quiet places. Though, perhaps (as these can not by any stretch of the tongue be classed as "anarchists"), they may possibly help make up the "28,000,000" real supporters of the alleged interstate amendment—and prohibition generally.

It was also brought out during the day that in one of the pamphlets sent out from Washington (whether under Congressional frank or not, I am ignorant) it was stated, in effect, that the German-Americans were opposing the bill "because they did not understand its purpose, and that the National Alliance was in the pay of the brewers."

As to the first, these gentlemen, who have not even a speaking acquaintance with the German language, are hardly qualified to pass an opinion.

As to the second, I desire unqualifiedly to say that this assertion is a meretricious libel.

The German-American does not claim to have a patent on holiness and a monopoly of all the virtues, but does claim honesty as one of his qualities, and has a keen perception of his duties and rights in life and government, and protests against the besmirching of his character and those who represent him by "professional Christians" and prohibitionists, who trade upon the credit of their assurance, and agitate against the natural liberty of man simply to perpetuate their positions and the accompanying salaries.

If somewhat of the latter part of this plea does not go so much to the matter before your honorable committee as to the individuals that appeared before it, I offer in excuse that I am wrought thereunto by an honest indignation brought about by the assertions and dishonest methods resorted to by them to influence the passage of the bill before you.

Ever standing for true temperance and opposed to insincere and impossible prohibition, the German-Americans of this State join with the German-American citizens of the other States of the Union in protesting against the Hepburn-Dolliver bill.

STATEMENT OF PHILIP RAPPAPORT, ESQ., OF INDIANAPOLIS, IND.

Mr. RAPPAPORT. Mr. Chairman, I doubt very much whether I will have anything to say that will call forth any question on your part, but as a precautionary measure I will ask you to desist from asking any questions, because it will greatly embarrass me, I being quite deaf.

I represent the North American Gymnasium Union, a national organization entirely apart and distinct from the National German-American Alliance. We have about 300 local societies distributed all over the country, with a membership, in round figures, of about 80,000, among whom I am perfectly sure you will not find a single one who sympathizes with the measure that is before the committee to-day.

I have here in this little book the principles which this organization holds to and their laws, and I leave it on your table. I will only read the first paragraph, which says:

The North American Gymnasium Union is a league of gymnasium societies of the United States of America, organized for the purpose of bringing up men and women strong in body and mind and morals and of promoting the dissemination of liberal and progressive ideas.

We have not only about 80,000 members, but about 80,000 voters. Paragraph 67 of the laws of the organization says:

Candidates for admission to the society must be of irreproachable character, and must either be citizens of the United States or have taken the necessary steps for becoming citizens.

Now, gentlemen, while I am talking to you I might perhaps say something which might not be altogether in accord with the views of these gentlemen and which I probably might not say if I were representing the other organizations. But I want you to keep in mind I am representing quite a different organization. It is not my intention to make any sort of a legal argument, because I don't believe that I could enlighten you upon that side of the question at all. I suppose you all know about the legal side of it. The general object of the bill is to aid in the enforcement of prohibition, and as I and all those whom I represent are strongly opposed to prohibition, we are certainly opposed to the passage of this bill. I am against prohibition because it does not prohibit, and if it would prohibit I would be against it because it did prohibit. In other words, I am against prohibition on account of its vicious, pernicious, demoralizing effect, and I am against prohibition quite irrespective of its effect.

I am not going to speak to you about the effect of prohibition, because men of your experience and caliber know enough about that, and it is not necessary for me to tell you about it. Yet I call your attention to just a little matter, and that is this: I have here the last annual report of the Surgeon-General of the Army. This report is accessible to you and you will find on page 18 of this report a table which is a comparison of the admission and death rate of the United States Army for certain special diseases with those of foreign armies, and if you will study this table you will find that with prohibition in the American Army (and I apprehend there is not a particle of difference in which way prohibition appears, it is always the same

kind of prohibition), delirium tremens, alcoholism, prevails from 200 to 600 times as much as in the beer-drinking German Army. And so it is everywhere. It is the old, old story of Adam and Eve and that celebrated apple. Prohibition has been a failure and always will be, whether it has reference to an apple or a piece of ham or a glass of whisky.

I have here another document which I suppose you are all familiar with, and that is the Declaration of Independence. This holds that our Creator endowed us with certain inalienable rights and among these rights are mentioned the right of life and of liberty and of the pursuit of happiness. Now, what does that mean, the pursuit of happiness? It gives me the right to the pursuit of happiness, does it mean that I have a right to pursue your happiness or does it mean that you have the right to pursue my happiness? If it means anything I suppose it means that everybody has the right to pursue his own happiness. And if a glass of beer or even a glass of whisky is, in my opinion, necessary for my happiness, I want to have it, and I can not concede to anyone the right to forbid it to me or prevent me from taking it.

Now you may say, "Is that so; is a glass of whisky or beer really necessary to any man's happiness?" Perhaps not. But I tell you this, that the humiliating thought that it is possible for anyone to prevent me from getting it, if I want it, makes me unhappy, and I believe I have the right to the pursuit of happiness, if not under the Constitution of the United States, at least under the constitution of the State of Indiana, from where I come. I will not concede the right to anyone, either to the members of the Women's Christian Temperance Union, or to any clergyman, or to the State, to prescribe to me a certain mode of happiness. If I want to become happy, if I want to pursue my happiness, I want to do it after my own fashion.

I appreciate the good motives of the Women's Christian Temperance Union. I will even go further and concede that the clergymen are honest in their belief and think they are right; but I do say this: Whenever the clergymen commence to meddle with legislation and politics, beware! I am somewhat of a student of history, and you can not show me in all the history of mankind, from the remotest times of antiquity up to the present day, a single page where an action of the clergy is recorded that tended to bring about civil or political liberty or liberty of any kind; but you can turn to a thousand pages that record the fact that the clergy has always been in favor of oppression, suppression, repression, and every other kind of pression.

Now, then, I have no doubt that they have done what they believe to be right; that their acts were according to their beliefs. I have no doubt that the leaders in the Spanish inquisition thought they were doing right when they burned and racked their victims; but because they believed it right their victims received no benefit or alleviation of their sufferings. Now, gentlemen, we are serious in this matter. We do not want any kind of a prohibitory law, and we shall use our rights as citizens whenever we have an opportunity to prevent such laws. I have a little book here that is a reprint of an article from the North American Review, which was written by a surgeon of the Army, and here I find the following passage which may, perhaps, be interesting to you. It says:

A prominent army officer at Peking, under date of July 9, 1901, writes me: "The Women's Christian Temperance Union would have no fault to find with the post here. The men go outside and get drunk on samsoy in town and go to sleep in back yards and other places which are worse, but the sanctity of the government reservation is maintained. The Germans have their beer garden, the Japanese have their place where they drink their tea, and the British have a place where they meet to take their drinks and they bring their beer to the table, and the French soldier has his little bottle of wine at dinner. We alone are virtuous; we are the advocates of health; we are the great hypocritical hippodrome; none like us."

The gentleman who spoke a short time ago asked you to keep your hands off. No law forbids the drinking. No law forbids the buying of intoxicating liquors. It is the State's business when it goes over its borders and prevents its sale, and you don't need to meddle with it at all.

Just one word more as to my personal experience. I am living in Indianapolis, which is the headquarters of the organization I represent, and I have the honor of being a member of the executive board. I came to Indianapolis in 1874 from Cincinnati, and when I arrived in Indianapolis, in the evening, the town was almost ablaze with bonfires, and the Democrats had an immense jubilation. Why? Simply because two years previous to that the Republicans had passed an obnoxious liquor law, which was called the Baxter law, and my German friends—I had no opportunity at that time to be one of them—united with the Democrats and all the Republicans, and the next legislature abolished the Baxter law. After that, in 1876, was the Presidential election. The issue was between Tilden and Hayes; and that was the memorable time when there was great exodus from the Republican party; such men as Carl Schurz—

Mr. CLAYTON. Carl Schurz was with the Republicans in that campaign. Don't you think you are straying a little away from the subject?

Mr. RAPPAPORT. I am through in a few moments. It seems to me that this might bear indirectly on it, because you ought to know how a certain class of citizens is affected or would be affected by a law of this kind, and I believe that a large number of citizens have a right of being considered in the legislation.

Mr. CLAYTON. No doubt of that; and we have sat here day after day and given them hearings hour after hour, until I for one, without speaking for this committee, have gotten to the point where I think this hearing ought to close.

Mr. RAPPAPORT. It is for you to do with this law as you please, and I think it is for me, for us, to give expression to our opinion.

Mr. CLAYTON. Exactly; and we have heard them.

Mr. RAPPAPORT. As citizens of this country we think the only way and the absolutely proper way is to regulate this by our ballots.

Then it was in 1881, I believe, the legislature of the State of Indiana passed a prohibition amendment for the first time, and then again we Germans organized, and I had the honor then to be the secretary of that organization, and the effect was exactly the same as it was before. It was the same way two years after. I guess it was in that election that President Harrison did not get even a majority in his own county. Now, we can not do anything else but use our political rights; and the manner in which we use them I

think is a matter you ought to know about, because after all, as far as the legal effect and practical effects are concerned, you know as much about it as any of us; but the reason we are for a political demonstration, either on this side of the House or the other side of the House.

STATEMENT OF MR. AUGUST H. BODE.

Mr. BODE. Mr. Chairman and gentlemen of the committee, before I start it is generally customary to make a few remarks about the personality of the speaker, and for that reason I will say that I come from the city of Cincinnati and represent the German-American Association, an association comprising about 80 different associations and about 20,000 men. I am also vice-president of the State association of which Doctor Hexamer is president.

From my personal knowledge I am sure that every one of those will disagree with the ideas expressed by this bill. Like my friend, the reverend gentleman this morning, there is no personal feeling in this matter. I am not a brewer or brewer's son and have not been a brewer's attorney, and so far as I am concerned I don't smoke or chew and only once in a while take a glass of beer, so I have no personal feeling. But I think it would be an unjust thing to other people to compel them to forego the pleasure of drinking a glass of beer, if it is a pleasure to them. I haven't the slightest idea but that it is going to be and intended to be a prohibitory law in those States where they have prohibition. This law as it stands there will certainly be a prohibitory law in those States; and I think the gentlemen are wrong when they say it is not calling upon Congress to come to their help.

I agree with Mr. Smith that his community and the States have a perfect right to enact such laws, and, I think, under the decision of the interstate-commerce cases, we can not prohibit the shipment into the State of original packages of liquor. If they find anything deleterious to health or morals they can prohibit, but that is as far as they ought to go. But what do they do here? They come and ask the power of the United States to help them along. They really confess that they have not been able in their own States to carry out their laws as they thought they could, and now they want the United States to say that it is not enough that under the police power of our States we prohibit the sale of liquor within the State as soon as anything comes into our State, but they want to stop it as soon as it gets to the boundary line. That is asking something like this: That if in this State there is a law prohibiting the bringing in of liquor of any kind then you stop on the other side one step.

What is a crime here is perhaps in favor on that side. Now, is that a proper thing for the Congress of the United States to do? The gentleman from New York says it is a matter of great financial importance in New York State—so many millions of dollars revenue for the State. In one State that is the question. In one State it can not be done, in the other State across the line it could be done, and the way I read this law now it would be a crime for a brewer or a distiller to ship across the line, because the place where it would be sent out would be the place where the crime would be committed. That would be a serious thing—that you could make a crime in Illi-

nois for the purpose of Iowa. That would hardly be a proper thing to do.

They have stated that they can not, under their State laws, carry out what they intended to do, and they want the help of the United States to do it. Now, it seems to me it would be very much nicer for them to say: "This is a matter we can not carry out in spite of all the laws that can be enacted." I have no doubt this law is constitutional. It might not be if that amendment were cut out, but this way it is a constitutional law, that the State does exactly as it pleases, but if they confess now we have been trying in Vermont and Maine and Iowa and other places to enact such a law, and we have miserably failed, so far failed that we have to call on Congress to help us along, that is something that I think ought to be beyond the power of Congress, or beyond the good will. We ought to consider the justice, the equity of the matter, and say we can not sit here and compel people in other States to live according to the notions of somebody else there.

If we would come to the idea that this thing could not be carried out, that you can not make any person virtuous and moral by law, and that it is entirely a matter of education and experience, I have no doubt that when the W. C. T. U., the good women here who lead the best of lives (and God bless them, males and females), if they would attend to their home life, it can not be done by law. On account of my home influence I don't drink to excess. Instead of spending their time about other things they ought to spend it at home and instill the instincts of virtue into those in the homes. That is the only place they can get it; they can never get it by law. And so I say while it is immaterial whether it passes this way or that way, it is quite certain in my opinion that it will never accomplish the purpose they seek to accomplish.

It is not the way to make the home pure and immaculate; the way to do that is to do that at home. In England, France, and Germany, and even in Russia, the boys can smoke or drink. In Russia the boys smoke cigarettes just as they want to. Here we say that the American boys and girls are weaklings, miserable things; that it is necessary not to let any temptation come before them. I don't think so. Throw them in the water before they learn to swim, but before you throw them in give them the lessons, instill those lessons into them, and if you do that there is no need of temperance legislation here any more than there is in England, France, or Germany.

I thank you.

Mr. NICHOLSON. I would like to say that I think we have only one other speaker, Mr. Andrew Wilson, and that Mr. Sweet will make a brief statement after that.

The CHAIRMAN. The committee insists that the arguments be confined to legal arguments from now on. Miss Cousins desires to speak, but in view of this insistence on the part of the committee I would suggest that Miss Cousins may file her remarks. However, the matter is entirely within the discretion of the committee. There are three or four gentlemen here from a distance, and two of them have gone out because they think they have been slighted.

Mr. SMITH, of Kentucky. I suggest that Miss Cousins should be heard.

The CHAIRMAN. It is entirely at the pleasure of the committee.

STATEMENT OF MISS PHOEBE W. COUSINS.

Miss COUSINS. Mr. Chairman and gentlemen of committee, in the first session of the last Congress it was my privilege to hear some of the arguments for the Hepburn-Dolliver bill and in turn to refute a part of them from my point of view in an extempore speech of ten minutes.

Since then I have been a sojourner in prohibition Kansas for over a year, and I am glad of the opportunity to give a few facts and recount my observation of its workings.

And first I submit the opinion of this bill by one of its authors, whose name is the hyphenated half of its title, Senator Dolliver.

In a speech at Kansas City, Mo., at the close of the last session of Congress on "Public Virtue" the honorable gentleman said:

In my judgment we are overestimating the value of legislation as a cure for the moral defects of a community. The family itself should shoulder the burden of moral affairs. They acquit themselves of responsibility by passing an act on the subject. For over twenty-five years I fully believed that the way to stop drunkenness was to amend the constitution of Iowa. I have concluded that what is needed is an amendment to the constitution of the citizen, and have abandoned the idea of making men sober by law.

If the gentleman decides after a twenty-five years' tussle with the question in his own State that he can't stop drunkenness in Iowa by an amendment to its constitution by what method and how does he propose to have this bantling which bears his name jack up the Constitution of the United States so as to stop tipping in all the States of the Union, and insert a Federal prohibitory direction that all the citizens thereof shall be made sober by inhibition, when he had thrown up the job in one State after a quarter of a century's trial?

Of the results in Iowa I will speak further on.

The Rev. Mr. Dinwiddie, secretary of the Anti-Saloon League, stated in the first hearing of this bill—which statement you will find on page 246 of the printed record—that three States—Maine, Kansas, and North Dakota—had absolute prohibition, and no sales of liquor were allowed save for pharmaceutical purposes.

Either the gentleman must have been misinformed as to these States or he misrepresented the facts as they are known to the most casual observer.

I shall review for your digestion the situation, as it came under my observation, as a refutation, later on, of the Reverend Dinwiddie's assertion, and merely wish to say as a passing note that the continual reiteration of the Biblical phrase, which is used so generally by divines and their allies, the members of the W. C. T. U.'s, to bolster up their demand for total abstinence—"Look not upon the wine when it is red," etc.—is not warranted in the Scriptures by this solitary test on prohibition.

From Genesis to Revelations the cultivation of the vine, the vintage of grapes, and the use of wine is found throughout its pages, both as a beverage and as a commodity of trade and commerce. We have no record previous to the flood of vineyards or wine vats or drink offerings, and yet Scripture tells us that, notwithstanding the absence of these so-called demoralizers of the race, the inhabitants of the earth became so vilely wicked that God repented of his Garden

of Eden experiment, and decided to sweep the whole into oblivion, save Noah and his three sons.

After the flood had subsided Noah is found in conference with the Lord, at the foot of Mount Ararat, and not only is deeded the whole earth for himself and sons, but the promise is given that the curse is removed—no longer should thorns and thistles grow, but the whole earth should blossom as the rose.

And the first thing which Noah did, in substantiation of this great honor, was to plant a vineyard, grow grapes, and formulate a wine, the brand of which is not given, but judging from the effect upon Noah, its stimulating attribute was quite as effective as the wood alcohol of to-day.

When Melchisedek, the king and high priest of Salem, goes out to meet Abraham on his return from rescuing his nephew Lot from kidnappers, he carries with him both wine and bread as a signet of rejoicing, and this communion service is found in every stage of the Jewish nation's existence, both religious and secular.

I find that Ham, the off-colored son of Noah, to whom was given the land of Canaan as his one-third patrimony, and was the only one of the three who stuck to his job and made a success of it, was also the raiser of grapes, as well as a brand of milk and honey, which made his country renowned as the land of promise, and one for which his less favored brethren who lost their patrimony became wanderers over the earth, landed in Egypt as slaves, were manumitted by Moses, yearned to possess after a forty-years' tramp through the wilderness, and who found, when they reached the border land of Ham's province, by the reports of the spies, who returned with a bunch of the sample grapes borne on the shoulders of two men, on a pole, that the inhabitants were giants of the Anak type, so terrifying in their aspect and so impossible of subjugation that the Israelites refused to go further, but turned back into the wilderness for another forty years of cultivation of the grape and like conditions of their off-colored brother's land, which should fit them to finally cope with the Hercules and Samsons in Canaan.

In the fifteenth, twenty-eighth, and twenty-ninth chapters of Numbers, and in Deuteronomy, in a lesser degree, I find the direction of Moses and the priests as to the burnt offerings, meat offerings, sin offerings, and "drink offerings to the Lord" which must be brought into the Temples at stated periods. Each bullock calls for a half hin of wine, a lamb one-third, a kid one-fourth "as a drink offering to the Lord," while the goat, which is indicated as the atoning sacrifice, takes the whole offerings of all the rest.

The wine which is indicated in any of these chapters would float a modern battle ship, and the question arises, "What was done with this drink offering?" Vats must have been there and storage plants which could hold this vast amount of liquids, while it must be inferred that both people and priests were generous users of the grape juice, and patrons of that art, the growth of grapes and distillers of wine, which is shown all through the old Scriptures as one of the most important branches of commerce and trade, as well as the element of the blood which gave energy to all the human faculties. Wine is constantly referred to in the old Talmudic versions as the "blood of the earth."

In the New Testament, Jesus, the great Teacher, turns water into wine at the marriage feast, and Paul, his exemplar, says "take a little wine for the stomach's sake," while Christ in his last communion service with his disciples follows strictly the old régime of Melchisedek and the Jews in breaking bread and drinking wine as a token of fellowship with all who love the good.

What then are the results of prohibition? In Senator Dolliver's State it has depopulated that fine area. By the last census of Iowa, since 1900, over 30,000 of her citizens have left the State. The schools report 45,000 less children in attendance, and a reporter of the Minneapolis Tribune writes of a recent trip through the State, after a thorough tour of the agricultural districts "that empty farm houses dot the land in all directions."

Ten bankers of Iowa committed suicide in 1904, whether from weak tea or cold water is not stated.

The fact is, gentlemen, that men of independence and strong character will not submit to the espionage, the spying, the contemptible methods, and impertinent attempts to control the personal liberty of others which prohibitory laws always engender. They prefer to move on, even to less favored conditions of climate and soil and surroundings.

It has been suggested that the rate rulings of the railways are largely responsible for this exodus. But the more alarming feature of this, from which none may escape, is that our franchises are rapidly passing into foreign syndicates control. The lords and dukes of Canada and Great Britain own three-fifths of our Northern Securities stock, while the Rock Island is entirely owned abroad, and other lines are passing into a like un-American ownership.

What of Maine and Kansas? In a recent speech at a banquet in New York the governor of Maine stated that prohibition was a profound failure and the people were the only ones of all the New England States who had held on to it, in the face of its disintegration of the morals and manners of the entire community, and in time it must be repealed.

Of Kansas and its "pharmaceutical" humbug, Thomas Benton Murdock, a well-known writer and editor says, in the Kansas City Star:

THE KANSAS WHISKY BOTTLE.

From the Missouri border to the western confines of Kansas, along every line of railway on both sides of the track, in the sunflower patches along the right of way, in the haymow of every livery stable in every town, in every alley and back stairway, in the top drawer of every bureau of every hotel, in the cellar-way of many homes, can be found the Topeka drug-store bottle.

I have seen the 4-ounce, the pint, or half-pint bottle. It is the same shape, the same greasy, unlovely appearing piece of glassware, which suggests the Topeka drug-store stuff—the cheapest in the land.

The Star, in commenting upon Mr. Murdock's arraignment, says:

In this accurate and graphic description Mr. Murdock, with his characteristic intuition, presents the real gist of the Kansas liquor question, where prohibition encourages not only evasion and deceit, but, what is even worse, a depraved taste.

Of my own personal observation I can enforce Mr. Murdock's review, with an emphatic indorsement of the demoralization rampant in Kansas.

In a little town of 800 inhabitants I have seen porters and maids carry out bottles by the hundreds from rooms and stairways where they have been thrown. Little boys follow men into the drug stores, with corkscrews, begging the gift of a drink for the privilege of uncorking the bottles, to which bottles these men have sworn falsely, as having all the diseases of the calendar.

The schools are invaded with this demon of falsity, and boys were expelled during my stay there for drunkenness and inebriety, a condition unknown in towns and cities, where the license system prevails and where children are protected by the law from illicit drinking. The solemnity of an oath is entirely ignored and the foundation stone of truth in character is rapidly disintegrating under such conditions.

Young men who are clerks and porters in the hotels, whose characters are still in the formative period, are sent by the patrons to buy these bottles so aptly described, and commit perjury with the utmost nonchalance as they gleefully swear that the person indicated by the bottle has Bright's disease, liver complaint, lung trouble, gallstones, appendicitis, or whatsoever physical disability may present itself to these young men's minds. These sales, I presume, the Rev. Doctor Dinwiddie would indicate as "for pharmaceutical purposes" alone.

It must thus be seen that prohibition breeds cant, hypocrisy, fraud, perjury, and like secret vices, while honeycombing the State with far greater evils to the rising generation than open saloons, properly watched and safeguarded, could possibly produce. Furthermore, this bill will not stay the sale of liquors in town, village, or hamlet. The bootlegger would spring up by the thousand, where now he counts but the hundred. I used to watch from my window, during harvest time in Kansas, this enterprising smuggler dispensing his wares to the tired laborer at close of day, behind an old barn which served as a partial screen for this bargain and sale counter. The number of bottles which came from his capacious boots, pockets, and hat to the numerous patrons who centered about this Falstaffian dispenser were marvelous to behold, and to gratify my curiosity I sent an inspector over to the barn, to whose shelter the harvesters retired to indulge in their libations to the gods, and found the surroundings to be even worse than the Augean stables so graphically described in ancient verse and fit subject for the Herculean cleansing.

In the winter season I faced another part of the village and there studied a different division of this "pharmaceutical" exploitation—the "speak easies" and "joint" sections.

In an old building which bore the title of "Restaurant and café," to whose uninviting outwardness there came an astonishing procession day by day of all kinds and kindred patrons, I learned through my inspector that this Mecca contained a motley assortment of old tables and chairs, uninviting crockery, forks and spoons of dilapidated brass, with cheese and crackers smelling of the ancient order of the hibernating mouse, all of which were thrown in for 10 cents—or less—which entitled the holder of this bill of exchange to a lottery-prize stick with a hook attachment, which dexterously lifted a plank in the floor and revealed an Aladdin lamp in transformed rows of this Topeka whisky bottle—reposing upon the bosom of Mother Earth, and only awaiting the magic touch of the male magician to become a thing of beauty and a joy forever—in his gastronomical

world. Or a check at the door would indicate a coupon slide in the wall which disclosed a similar feast of the "red eye" and entitled the fortunate possessor to fill his pistol pocket with a flask or two and retreat wheresoever he willed, as a Ganymede cupbearer to Reverend Dinwiddie's "pharmaceutical" humbug.

Thus the drug store, the boot legger, and the speak easy, of Kansas, enforce the prohibition law to the utter demoralization of all concerned.

And finally, gentlemen, I point you to the report of Mr. Yerkes, the Commissioner of Internal Revenue, last September, on this question of alcoholic devices—in patent medicines, whose sale is enormous in prohibition States—directing his deputies to impose the tax—the same as on liquors, as this report avers "they are composed chiefly of distilled spirits without the addition of drugs or medicines in sufficient quantities to materially change the character of the whisky"—and he refers to figures collected in Massachusetts recently, showing the immense sales, one such compound with a high percentage of whisky, having been bought to the extent of 300,000 bottles in one year in prohibition communities of one New England State.

In October Mr. Yerkes issued a similar ultimatum on "Essence drinks."

The officials of his department reported "that prohibition communities throughout the country consume an enormous amount of these alleged essences of lemon, vanilla, cinnamon, and ginger, sold by country merchants, drug stores, and others as flavoring extracts." And, according to their investigation, the sales "were sufficient in some communities in one day to have flavored all the pies made in the neighborhoods for five years."

Many of these compounds contained more than 50 per cent of pure alcohol, and all from 25 to 80 per cent of alcoholic strength, and these goods had no sale outside of prohibition districts.

The appeals which have been made to your committee hitherto on the "home" influence, in reference to this bill as a protection to the children and young men of this nation, comes with bad grace, it would appear, from a people which have instituted the "curfew bell" as a substitute for the parental authority and restriction—which ought to be of sufficient strength—to keep their children within the confines of home at night and to lessen the number of street arabs, whose alarming increase comes equally from the Christian firesides as out of the slums and purlieus of the poor and forsaken.

I am not one of those who believe that all of the goodness of the race centers in one of the sexes—the woman—or the condensed badness inheres in the other—the man.

The virtues do not descend in a straight line to Mother Eve, or the vices remain in unbroken length with Father Adam. Nature is an exact accountant, and a just one. She gives to the daughter the characteristics of the father, and to the son the attributes of the mother, while in the final adjustment she will be found to equally balance the measure. There are just as many good women as good men, and no more; equally as many bad women as bad men, and no less. The crossbreed of divinity and devilry are everywhere to be found in the sexes as Nature's true scale of balance.

If the man to-day is charged with neglect of his home, at the club of the rich, or the bar and saloon of the poor, so, too, there centers in

bridge whist, card parties of progressive euchre, the prayer meetings and charitable mite societies of religious organizations, the tap root of disorganization in woman's home rule and neglect of the beatitudes in parental restraint and maternal protection.

A most pitiable tragedy occurred in this Kansas town last winter, due solely to the contempt of the boys who refused to obey the curfew bell, resulting in the deaths of both postmaster and town marshal; and it was found that the boys who composed this miniature band of lawbreakers, who terrorized the community at night and were a menace to the peace and quiet of citizens, indoors or out, belonged to Christian families in toto, and came out of what we now call in a greater or less degree "the best society," formed on the sliding scale from Washington to the little hamlet in the jay-hawkers' domain.

Yet close on the heels of this tragedy there came a "reverend" pence collector for the antisaloon league, who stated that Kansas was expected to raise \$20,000 or more to suppress the lawlessness of the saloon and the iniquities of the drink habit all over the land.

In conclusion, gentlemen, permit me to call your attention to a little brochure on "The Vine and Civilization," published in 1883 by the late Henry Shaw, whose botanical gardens in St. Louis are of world-wide fame, and to that vast body of law-abiding, patriotic citizens, the German-Americans, numbering some 12,000,000 or more, which have been so ably represented in these hearings, who believe that beer is a wholesome and nourishing drink, recognized by them as a blessing and necessity—to many a liquid food—more conducive to sociability and good-fellowship than any other drink, wherein health, happiness, and strength, not drunkenness, centers. I beg your attention for the moment, to point the moral of the use of both these beverages upon civilization and advancement.

Of the wine Henry Shaw shows by carefully compiled statistics, and able literary review, that the wine-producing nations were always in the lead in science, art, literature, poetry, and the drama, while countries like that of Turkey, which forbids wine culture and strictly prohibits alcoholic beverages of any kind or character, stand at the lowest round of the ladder of civilization.

Ancient Babylon had her wine culture and distribution wholly under the care and guardianship of women 2,250 years before the time of Christ, and degeneration to that wonderful nation began when food and wine were permitted to be adulterated.

Canaan, the type of the promised land, owed her reputation and power to Ham's brand of the Eschol grape, equally with his cattle and bees, and Israel only became great when she followed this example and cultivated the "drink offering to the Lord," which transformed the Israelitish tramps into a composite nation, fitted to cope with the giants of Ham's land, and wine in both the Old and New Testament is the beverage par excellence of the Jew, while thus far no case is recorded of a drunken Israelite on the streets, or an intoxicated Jew behind the bars of the lockup or hold over.

On the 6th of October, 1904, at the World's Fair in St. Louis, a German day was celebrated to mark the contribution to America's greatness and development by that splendid body of citizens, the German-Americans, since the landing of the first colony (on the

Delaware, near the mouth of the Schuylkill, October 6, 1683), under the leadership of that remarkable German, Francis Danforth Pastorius, whose settlement of Dutch, Mennonites, and Germans gave impetus to the greater immigration from the Fatherland, which followed.

It was deservedly said by a leading St. Louis journal that—

The German ingredient of the American population, besides being the most numerous of all the foreign elements of the country's inhabitants, was also one of the most valuable, Germany taking the first place after Pastorius's settlement among all the countries of the world in furnishing immigrants to the United States. In peace and war the Germans, whether native or foreign born, have ever been the most intelligent, order loving, and patriotic of citizens, always in the first rank on the line of march of expansion, conquering and civilizing the wilderness from ocean to ocean.

In western Kansas—where I sojourned—the farms on the Saline River had been abandoned by Americans years ago, but all of them have been taken up by the thrifty Germans, who have brought cereal, fruit, and flower to perfection, and to-day they are the advance agents of financial security to both home and State.

This bill would deprive those valuable citizens of their personal right to good beer, to which they are all devoted, and create a spirit of antagonism and bitterness which bespeaks trouble for all concerned.

In 1858 Ralph Waldo Emerson, in presenting a letter of introduction to Thomas Carlyle, of the Longworths, of Cincinnati, said:

The chief merit of Mr. Nicholas Longworth, the founder of the family, is his introduction of a systematic culture of the wine grape and wine manufacture, which he attained by the importation and settlement of German planters,

so that great industry which brought millions and reputation to others was the product of German intelligence and thrift.

With their rich inheritance of blood and brain and brawn from that trio of ancestral races—the Vikings, the Teutons, and Germanic tribes—"who knew no fear and feared no death" while planting civilization in their march of twenty centuries, through European morass and impenetrable forest, they also were endowed with a like spirit of that incomparable ancestry, who, when the day's toil was done, gathered about the wassail bowl, the drinking horn, or loving cup to give the hand of fellowship and toast in loving kindness, health, and happiness to all.

To these virile races the world owes the preservation of that spirit of equity and exact justice as between man and man which forms a part of the jurisprudence of every civilized nation in Europe to-day.

To the matrons of these nations, who tramped beside their males in the two thousand years of advance and shared with them the perils both of land and sea, we are indebted for the essence of that spirit of equity and justice which resides in the unwritten law.

They were accustomed to sit in council with the warriors of old, and commit to memory for transmission to their children the law as it came word for word from the lips of the male.

No race suicide has ever been charged to their account, and the recent utterances of a female M. D., in a convention of the W. C. T. U.'s at Detroit, that the ballot for women would make them more prolific, while per contra it would stay the tributes of man on the altars of Eros and Bacchus, would fall on ears deaf to such unmeaning travesties.

In art, education, literature, poetry, drama, music, scientific investigation, and athletic sports the German race is to the fore. At the World's Fair of 1904, in St. Louis, out of the 2,000 medals and premiums offered, the Germans were accorded nearly 1,600, while to the genius of a young German-American was given the honor of the best formula for them all, gold, silver, bronze, and the Roosevelt.

The "beer garden" of the Fatherland is, to the modern German, what the forests of Woden stood for in fraternal union of ancient Viking and Teuton. All over Germany they are gladsome spots of rest and beauty unnumbered, consecrated to the spirit of democratic equality, protected by governmental supervision in wholesome respect to the minutest right; an open-air paradise from June to October, where gather the rich burgher and humblest workman, surrounded by family and friends, seeking rest and recreation in the exhilaration of social life, which the glass of good wine and wholesome beer, supplemented by fine music, restful trees, flowers, and palms invite to uplift his tired soul.

Berlin, with innumerable "gartens," has just completed in one of her suburbs a magnificent beer palace, built upon terraces after a type of the old Assyrian style of Ninevah—a source of unending surprise and beauty in bewildering panorama of architectural structure, seating 20,000 patrons, and dedicated by the Emperor William in terms of lavish praise to the genius of the young German-American who planned and wrought its marvels.

Into his land of adoption—America—the German pilgrim came, installing his patron of inspiration—the beer garden—with all the devotion of the Fatherland's inheritance.

In Missouri it has ever borne the reputation of a decent, law-abiding, clean, and orderly center of good-fellowship and cheer, within whose borders no treason was ever plotted, and no traitorous utterances against free institutions ever whispered.

To these faithful patriots Missouri owes her retention in the Union in her hour of darkest peril, and to the German artisan, whose thrift, energy, and indefatigable labors are without compare, she is indebted to her advancing rank in the industrial world since the close of the civil war, while to the vast activities which have been projected by the German brain and formulated into wealth-producing industries by German enterprise and discernment Missouri forges to the front as the imperial State of the Middle West.

Turkey stands as the only prohibition nation on the earth. Not a drop of alcoholic liquors has ever coursed the veins of this race from the foundation of its state and church by Mohammed, centuries ago. But where can you find a people more cruel, bloodthirsty, barbarous, and licentious than this? Out of it comes no inspiration to higher culture and broader civilization and no impulse of the nobler beatitudes which moves humanity onward and upward to progressive heights.

In the frightful atrocities perpetrated in Bulgarian and Armenian districts in 1878, which aroused all England to emphatic protest and brought Mr. Gladstone into his celebrated Mid-Lothian campaign, he summed up the character of this nation in one embracing stigma, "the unspeakable Turk."

Which then shall be the exemplars worthy of our following!

The Reverend Dinwiddie asks you on page 9 of the former hearing "to strain a point" and give the State superior powers to the nation, and thus destroy vested rights and immense industries which are secured within the Constitution, and appoint three prohibition States the guardian and dictator of all the rest of the Republic.

STATEMENT OF ANDREW WILSON, OF WILSON & BARKSDALE.

Mr. WILSON. Mr. Chairman, it is not my purpose to indulge in any rhetorical efforts and my argument will be exceedingly brief.

It is unquestionably true that education has much to do in the development of our civic life. That is one phase of it. But there is the phase of cooperation which must not be overlooked as well. The two things go hand in hand.

A word or two has been suggested about the case of Vance against Vandercook. That is the whole gist of that case so far as it touches the constitutional question. On page 452 the court says:

It follows that under the Constitution of the United States every resident of South Carolina is free to receive for his own use liquor from other States, and that the inhibitions of a State statute do not operate to prevent liquors from other States being shipped into such State on the order of a resident for his use.

The Supreme Court of the United States is dealing with a State law; it so states it in so many words. There has not been in the history of the Supreme Court of the United States, in all of its decisions, a single case in which the Supreme Court has stated that an act of the Congress regulating interstate commerce is unconstitutional nor do I believe there ever will be, because the court had gone so far, or certainly did years ago, as to indicate very clearly that even the objects of commerce might be selected by the legislative power. I am not here to suggest what may be a proper policy for this committee or for the Congress of the United States. I am here to say, as Judge Bode said a few moments ago, that this bill here as it is offered here is constitutional.

But I do not see that that should be of such great importance at this time. Having, as we think, unbroken precedent from the beginning that no act of the Congress of the United States has been declared to be unconstitutional which attempted to regulate interstate commerce, that it would hardly be of importance to us to consider that phase of it, because of the fact that it will be time enough for us to think about it when the matter is presented, perhaps, to the Supreme Court of the United States. Now, whether a State law will be constitutional or not depends upon the action that Congress has taken or the inclination of the Congress, and so this case of *Vance v. Vandercook*, as all the cases, shows clearly that line of demarkation between the police power of the State upon the one hand and the exercise of the constitutional authority of the Congress of the United States upon the other in regulating the commerce among the several States.

It is time enough when a State law contravenes the Constitution for it to be determined that that law is not in accord with the Constitution. I want to say that all the cases, in this respect, are in perfect harmony with the case of *Vance v. Vandercook*, and when we take into consideration that the ordinary State law—and State

laws are the things that the Supreme Court of the United States has been dealing with—is in harmony with the Constitution there is no difficulty. In the case of *Crowley v. Wilkinson*, the Supreme Court held that it was not an inalienable right for a citizen to be able to sell liquor. That case came from Louisiana, and while we hear a we must regard what the law says is right and what the law says is proper for us to do.

I think that is all I have to say; simply that there is no conflict of authority whatever in these cases, and that the Supreme Court of the United States has held every act of the Congress regulating interstate commerce to be constitutional, and that there is no likelihood that it will ever hold otherwise.

STATEMENT OF REV. E. M. SWEET, JR., OF MUSKOGEE, IND. T.

Mr. SWEET. Mr. Chairman, I had thought of submitting some remarks, but I think enough has been said on this question to present our side of the case. It is essentially a legal proposition that is before you, and Mr. Dinwiddie was to present the principal legal argument for our side of the case. Mr. Dinwiddie has been in bed since the hearing two weeks ago. It was he to whom we looked primarily to prepare the legal arguments, and I desire to ask of the committee the privilege that he be allowed to file his brief as part of the hearing. That is all I have to say. We thank you for your attention, and we will not take any more of the time for our side.

Mr. HEXANER. I would crave the indulgence of the committee not to limit the following gentlemen entirely to the legal side, and I beg of the committee that they be heard. I certainly hope the committee will allow them to make statements.

STATEMENT OF DR. WILLIAM GARTNER.

Doctor GARTNER. Mr. Chairman and gentlemen of the committee, I represent about 225 German organizations with a membership of many thousands in western New York, headquarters in Buffalo, who ask me to represent them here in opposition to the so-called "Hepburn-Dolliver bill." To that invitation I have gladly responded in person, because I am deeply and conscientiously opposed to all legislation which tends toward oppression and which singling out one class of people for what is little short of persecution, and the sectional and class legislation.

This bill appears to be in the nature of an attempted sumptuary law in restriction not only of commerce but also of our personal liberty, which is dear to us all.

It is aimed particularly against the manufacturers of malt and spirituous liquors from other States who find markets away from home, and to put their products under a sort of police ban.

I come from a country which is notorious for its temperance and in which drunkenness is so unusual as to call in every instance for marked and unpleasant comment. I speak of Germany, of which the laws are less restricted upon the rights and privileges of the individual than those of my adopted country have come to be.

It seems to me that no ~~one~~ traffic, recognized by the Federal Government and by State governments as worthy of recognition and proper for taxation, should be made the subject of legislation peculiar to itself.

The spirit appears to have been anew awakened in this country which actuated the placing of scarlet letters upon the breasts of women who had been found out in lapses from virtue and the burning of individuals accused of witchcraft. In other words, I mean the spirit of injustice and fanatical persecution.

Anything good may by abuse be rendered its opposite and become pernicious. What is true of the consumption of malt and spirituous liquors is equally true of a hundred other products which, intended by nature to be helpful to humanity, have in cases become its scourge.

I am a citizen of the United States, and my home is in Buffalo, N. Y., and I pledge you, gentlemen of the committee, that the vast majority of the citizens and voters of that place are united and strenuously opposed against every measure of this character, of which there are similar acts of legislation now pending at the capital of our State in Albany waiting for action.

If we do not look sharp to it, our boasted liberties will have become a sham and a byword, and if you sow the Cadmus teeth of persecution you will inevitably reap the usual results. I protest before this committee against the adoption of such class legislation directed against one article of commerce and against the wishes of two-thirds of the voters of this country as being merely the opening wedge for the perpetration of a series of legislative wrongs crystallized into laws hereafter to be adopted by the Congress of these United States at the behest of a small minority of the narrow-minded and bigoted people of the United States that think that laws can make the people more virtuous.

Gentlemen, I thank you for your kind attention.

STATEMENT OF MR. JOSEPH KELLER, OF INDIANAPOLIS.

Mr. KELLER. Mr. Chairman and gentlemen of the committee, I am the president of the Alliance of the German Societies of Indiana, we being represented in nearly every city of our State from Vincennes up to South Bend; from Richmond to Terra Haute we have branches, and therefore we may justly say that our organization is a representative body. It represents the sentiment of the German population—a population, gentlemen, that buys homes, buys farms, raises families, pays the taxes, and obeys the laws.

It appears to us that this bill involves a principle, striking at the very root of the liberties presented us by the Constitution of the United States; it seems to us that this bill abridges the personal freedom of the individual. Gentlemen, we believe it to be our right and our privilege to select refreshments that we consider wholesome for ourselves and our families. A very large majority of the people of our commonwealth would consider the passage of this bill an attack upon their household. These people understand how not to abuse their liberties and they would consider it a gross injustice to be deprived of privileges because a small per cent of the population can

not control their habits. We, in Indiana, hate hypocrisy, and by far the most of our people would consider prohibition a tyranny.

In the year 1873 the general assembly adopted a liquor law, the principal feature of which was that the application for a permit to sell intoxicating liquors had to be signed by a majority of legal voters in the ward or township. This law went into history known as the Baxter law. It was so obnoxious to the majority of our people that after it had gone into effect leagues for freedom and right were organized all over the State. What followed? In the election of 1874 the party that was responsible for the Baxter law met with tremendous defeat, and in 1875 the Baxter law was repealed and a license law was passed. Again, in 1881, the passage of a prohibitory amendment brought the same result.

In the name of thousands of German-Americans of Indiana I protest herewith against an attack upon our freedom, and ask you gentlemen for a fair consideration of our plea. The German-Americans of Indiana are as one man, and an overwhelming majority of the people of the State are not for prohibition, and in the name of thousands of citizens of German parentage I am here to protest against an attack upon our personal freedom.

In conclusion, gentlemen, allow me to thank you for the opportunity afforded me to express our sentiments.

STATEMENT OF MR. MAX HENNING.

Mr. HENNING. Mr. Chairman and gentlemen of the committee, I represent the German-American Alliance of the State of Ohio, with a membership of 85,000 people—85,000 voters in the State of Ohio. I do not represent the Woman's Christian Temperance Union, but I do represent about 150,000 German women who are not members of the Woman's Christian Temperance Union, who are home-loving women who educate and bring up their children in the proper way. In behalf of these German-Americans and their wives and children I protest against the adoption or passage of any class legislation of this kind. I thank you.

STATEMENT OF MR. HENRY ARNOLD.

Mr. ARNOLD. Gentlemen of the committee, I am thankful to you for having the privilege of saying a few words. It will only be a few words, because I am no orator, and so you will not feel disappointed if I am closing as I have commenced.

As our president, Doctor Hexamer, has told you, I am the presiding officer of western Pennsylvania. I might take the liberty of telling you that we comprise 150 societies having, as has been told you this morning, a membership of 23,000 voting citizens. If a bill like this should be allowed it would seriously affect us in the West, and, as we feel, it would be a stone thrown against personal liberty. All our members are emphatically against such a law. They have been good citizens, as you all know and has often been proven to you. The German-American citizens are law-abiding and peaceful. They only ask to be allowed personal liberty in their private matters, in their families, and in their towns. I thank you for this privilege.

Mr. HEXAMER. I should like to call on Mr. Heine, from the so-called Pennsylvania Dutch section, who will express to you the sentiment of those people there.

STATEMENT OF MR. PAUL HEINE.

Mr. HEINE. Mr. Chairman and gentlemen, I am no speaker. Besides that, I have a terrible headache to-day, and I wanted to be excused; but still, as the opportunity offers, I wish to express the sentiment of the people in Lancaster County, which I have the pleasure to represent. I wish to say that every one of our so-called Pennsylvania Dutch are against this measure. They consider it unfair, injurious to a great many interests, and that it has in it hypocritical tendencies to the highest degree, and for that reason alone, if for no others, we think that the proposed bill should be turned down. I say so in the name of all the members of our German-American Alliance and the German societies of our section, and I believe that every fair-minded, liberty-loving man and woman is in harmony with this expression.

I thank you very much for the opportunity you have afforded me, and ask another apology for my remarks.

STATEMENT OF MR. G. A. LAMADE, OF ALTOONA, PA.

Mr. LAMADE. Mr. Chairman and gentlemen of the committee, on behalf of the Altoona, Pa., branch of the German-American Alliance, comprising thousands of Pennsylvanians, industrious men, and voting citizens, and comprising thousands of conscientious church members, I desire to indorse the legal arguments as presented by the gentlemen from Chicago, Cincinnati, and Philadelphia, in opposition to this proposed legislation; and I also wish to indorse the moral views expressed by Mr. Rappaport and Miss Phœbe Cousins. In indorsing those views I know I express the sentiments of all my constituents.

Gentlemen, I thank you.

STATEMENT OF MR. P. A. WILDERMUTH, ESQ., OF PHILADELPHIA.

Mr. WILDERMUTH. Mr. Chairman and gentlemen of the committee, there are four words contained in this bill. I understand that the committee would prefer hearing the legal phases involved in this measure. Those words are use, consumption, and storage. We have no objection to the word "sale." We all understand that every State by its very organic act has the right to suppress the sale of liquor, but it has not got the right to suppress the use, consumption, and storage of liquor, nor has it a right to interfere with the shipment of that liquor before it reaches the hands of the consignee. With those words eliminated the bill would not be as obnoxious as we view it at present.

Sensible, reasonable beings do not have to be lawyers, nor do they have to be educated, can see in those four words the very object of

that bill which has been so frankly admitted by Mr. Richardson, and that was to prohibit the personal use of liquor in a State that might take advantage of this act and pass further repressive laws denying the personal liberty to the inhabitants—the unfortunate inhabitants—of those States.

There has been a question as to prohibition raised by many of the speakers. That question of prohibition is just as proper for the consideration of this committee as the legal phases involved, because there are prohibitive laws, consummatory laws, inquisitive laws, all kinds of laws, but you can not prohibit by law.

That had been tried, particularly in England, Scotland, and Ireland, some one hundred and twenty years ago, when they passed the most stringent and repressive methods. They increased the taxation to such a height that it practically forbid the use of liquor except by the men of wealth. That was the House of Lords' view of the liquor question and the measures necessary to repress the drinking, particularly of gin, at that time throughout England. The result was that respectable men—men of character—refused to continue in the business of selling liquor where it was the object of such restrictions. The result was that the liquor traffic then fell into the hands of smugglers and scalawags and blacklegs, and there was more gin drunk in England under this condition of affairs than there had ever been before. This continued for some time—for some twenty-five years. There were riots, there was bloodshed, and finally there was an attempted assault upon one of the members of the House of Lords, and that resulted in the repeal of those obnoxious and restrictive measures.

Whether we want to or not, we must benefit from seeing and studying as to what transpired not only to-day, but yesterday, and a thousand years back. There were things accomplished in those days that we to-day, with all our ingenuity, must confess we can not accomplish. Take the pyramids of Egypt; take the parables of the Bible; can they be done to-day? The consensus of opinion of thinking men, viewing history as we find it and recording events then as they transpired, is that prohibition and the restriction upon liquor can not be enforced.

The cases on the strictly legal phase of the bill that would apply directly upon it would be the case of *Lisy* against *Hardin* and of *Vance v. Vandercook Company*. Those cases have been quoted on each side. Those cases, as I view them, can only be properly quoted on the side against the measure. Logically following the admissions and confessions of the other side, their object is to prevent the personal use of liquor, and I am glad of one thing—that they have the manhood to stand before you and say that that is their object. We know what we have to contend with. In the first place, when they passed the *Wilson* bill they were confident that it would accomplish that result, which they find now, in the face of the decision of the United States Supreme Court, to be indefeasible. They want to override, they ask this committee to overrule, the decision of the Supreme Court in the original-package case, where the Supreme Court had to say to the State of Iowa, "Hands off; you dare not touch that liquor; hands off, that is a shipment over which Congress has absolute and the only authority."

The next step taken by the prohibition element was that in reference to the canteen. Since our enlisted men in the United States Army and Navy have had their canteen ruthlessly and illogically snatched from their hands there has resulted nothing but demoralization and desertions among the ranks of those men that enlisted under the Stars and Stripes, and are ready to go out and sacrifice their lives for their country. But I want to say to you gentlemen that I doubt if one of those men that were here to ask for the passage of that anticanteen law would take a musket and fight for the United States; I doubt it very much. They were very successful in having a law of that kind passed. They next attacked the House restaurant. Liquors were sold in the House restaurant. The House foolishly, I may say, listened to and acceded to their request and abolished the sale of liquors and wines in the House restaurant. The bill was passed over to the Senate and the Senate concurred.

Now, in the face of the decision of the United States Supreme Court, they want to enforce their ideas upon the citizens of prohibition States who still insist upon using liquor. They find that that decision of the Supreme Court took that weapon from them. They could not take that liquor away from the man if it came there in an original package, and so they bring this bill before you and they ask you to make this bill a law—for what reason I have not been convinced. I have heard all their arguments, legal and otherwise. The burden of proof is upon them to show that there is a necessity for any such inquisitorial act as this Hepburn-Dolliver bill. Under those conditions they have not brought enough here before this committee to entitle them to such a consideration of the bill as would be given to a bill that did not attack the personal rights and liberties of citizens who are unfortunate enough to reside in prohibition States.

As to shipments, I believe one of the orators on the other side, as an illustration, cited cases where liquor was shipped over to the American Express Company or the Wells-Fargo Express Company, any express company, into a prohibition State, and it was sent to A, B, C, D, or 1 or 2 or 3 or 4. That does not make an illegal contract; it does not necessarily follow that that is an illegal shipment. People go to drug stores in these prohibition States and buy Hostettters' stomach bitters, containing 56 per cent of alcohol, or Peruna, containing about 48 per cent of alcohol. Instead of that, I think they ought to have honesty enough to buy liquor, and if they do buy liquor they ought to have it shipped to them in their right names, but many of them prefer not to do so. If a man's name is Andrews he may have it shipped to A or if his name is Bradley he may have it shipped to B; he doesn't want people to know he used whisky.

If this bill should become a law that State law would be unconstitutional and they could not touch either a package of liquor in possession of an express company or steamboat company or in transitu in any way. That, I think, has been well settled. The safe, sane, and sound guide in viewing bills of this kind, as to the constitutionality, is to stay by the old landmarks—don't get too far away from the seven original articles of the Constitution. The Articles of Federation were found to be merely a rope of sand. This very thing, then, interstate commerce, and the impotency of the States to regu-

late commerce among themselves, under what was then known as the first Constitution of the United States or better known as the Articles of Federation played an important part in bringing about the present Constitution.

The State of Virginia in 1786 held a meeting, appointed commissioners to meet the commissioners of the other States for the purpose of arriving at some agreement whereby the trade relations, shipments, and imports between foreign countries and the States would be regulated. There followed shortly after the meeting of those commissioners the seven articles of our present Constitution of the United States. Now, these people ask you to delegate, to give, to return, so to speak, to those States something which the State of Virginia over 120 years ago asked should exist only in the United States; they ask you after 120 years to give back that power—to how many States? About three. At that time the understanding was when the Federal power was given the right and exclusive right of regulating interstate commerce or commerce then between the States that it would be ratified by three-fourths of the States.

If you were to apply those same conditions to this bill in which you are asked to give the rights of 45 State and 5 Territories, I don't think there would be any question as to what would become of the bill. One of the gentlemen on the other side said here two years ago that he would like to see the merits or demerits of this bill placed before the voters of the United States. That is just what we want. I am personally heartily in accord with a proposition of that kind, because after such a vote I think that they would be satisfied for some time to come that the people of the United States want no such legislation as that, nor would this committee's time be taken up with any such proposition or with the consideration of any such bill as the one now before the committee.

As to the question of contract, it is a serious matter to interfere in the contractual relations between citizens of different States. As an illustration, a liquor dealer receives a letter from another State. That State is a prohibition State. The writer of the letter asks that a cask of wine or of whisky or of some liquor be shipped to him. Now, the people in favor of or backing this bill are the people who want you to say by this bill that the place where the goods come from is the place of contract. In other words, you might just as well ask Congress to remove by law the soil of Illinois and put it in the State of Iowa.

Congress has no right to say where a place of contract begins or where it ends—that is, speaking in relation to such part of a contract as may be involved in this bill should it become a law—for when that liquor dealer receives that order for the goods, that liquor being in Illinois and the order coming from a prohibition State (as an illustration, say Iowa), it is an offer and an acceptance. The moment that offer is accepted it becomes a contract. That contract, however, does not become complete until the goods are delivered in the hands of the consignee, and it makes no difference where he is. It makes no difference what the State laws are to the contrary, and it makes no difference what laws Congress may pass to the contrary. The place of contract being in Illinois, he ships the goods, whether those goods are shipped C. O. D., on credit, or by any method of payment.

Then, as an illustration to show where a citizen is deprived not only of his personal liberty but of his property, the laws of the State prohibit the bringing of a suit to recover for liquor sold. If that is so, the sale being illegal in the State, of course the contract was not made in that State; yet at the same time this man that sent the liquor into the State, if he wants to bring suit to recover for the value of those goods, must go over into that prohibition State and sue the consignee there, and that right would be denied to him by the State law, and should he knock on the doors of the Federal courts they would say "No; we close our doors to you, because your demand is not as much as \$2,000." He could not appeal for his rights to a Federal court unless his claim was \$2,000 or more. Under those circumstances why should this bill be considered further? Why should it become a law? Reason and logic are against it, and no doubt the lawyer would say that it is unwise and unwarranted.

Congress in imparting to the States, or as some term it, delegating to the States, its right over interstate commerce parts with something too valuable to be made the plaything of a prohibition State or any other State, and that which they may not again receive back. Congress should very jealously guard all its powers, particularly over laws of this kind. The question having been admitted as to the purpose of the bill—for they make no bones of it, they say we want to stop a man from personally using liquor—under those circumstances, under those conditions, and all the phases, the law would be unconstitutional. I have here more in detail the questions which I have touched.

As I have said, interstate commerce was an important element in creating the present Constitution of the United States. The commissioners from the different States met, the first action being taken by Virginia in 1786, and these commissioners considered how far a uniform system in their commercial regulations could be adopted, as applying to all the States, for their common interest, and for their permanent harmony, and from that step there ultimately resulted the seven original articles of the Constitution. State rights and hostility to Federal power in times past have been the cause of bitter controversies and strife, where many States insisted upon their own government, independent of all Federal power, and how the shades of those departed exponents of State rights must view with indignation the spectacle of a few weakling States who ask for Federal power to do their work for them.

States which admit that they are unable to enforce their own laws and ask your assistance to help enforce unjust and obnoxious laws and restrictions against their own citizens are utterly unfit for self-government and should surrender their organic rights and become Territories where they would be under the direct and exclusive control of the Federal Government.

Thomas Jefferson, in the *Jeffersonian Cyclopaedia*, section 8131, etc., says:

I believe the States can best govern our home concerns. Interior government is what each State should keep to itself. I have always thought that where the line of demarcation between the powers of the General and the State governments was doubtfully or indistinctly drawn, it would be prudent in both parties never to approach it but under the most urgent necessity.

Viewing the bill from all points it is vague and inconsistent, for it does not clearly define the line of demarcation of the ending or the beginning of either Federal or State control over an article of commerce.

The words in the bill, to wit, "use, consumption, or storage," attempt to confer a power which neither Congress nor State has authority to do. These words plainly indicate the covert purpose of the bill. Those favoring the bill assert that its purpose is not to deprive a citizen of his right to use and store liquor for his personal use; that the bill is merely to assist in enforcing a law of a State which makes the sale of liquor unlawful. If this is true, why insert the words "use, consumption, or storage," of which an unfair and arbitrary advantage may be taken of citizens' rights under color of law? If the advocates of this bill are sincere, the bill should read "transported into any State or Territory to be sold therein, or remaining therein for sale on storage or otherwise," and no legislative power can go further nor confer greater police powers upon any State without contravening the constitutional right and personal liberty of individuals.

The words "before delivery" are in effect an interference with the right of contract, for under this provision there is nothing to prevent a prohibition State from seizing and confiscating liquor in transitu before it reaches the consignee, under section 1 of the bill which provides that liquor "shall, upon arrival within its boundary, before and after delivery, be subject to the operation and effect of the laws of such State as though such liquors had been produced in such State." How ridiculous the last sentence, when we know that in several States the production of liquor is prohibited by law. Under such facts what interpretation and disposition is to be made of liquors brought into that State for use, consumption, or storage?

A law can only prohibit the sale of liquor, but never its use; nor by any jugglery of words can this aim be accomplished, nor should even one citizen of the United States of America be exposed to the interpretation of an alleged law by zealots, and his persecution made possible by intolerance. It strikes me forcibly that this bill is an attempt of the tail to wag the canine, for its provisions are for few States. And as to the right to regulate the sale of liquor (over which a State has absolute power), and the right to use, consume, or store liquor (which is assured and can not legally be denied), there is this difference: If the liquor is brought into the State for sale or intended sale, then it is subject to confiscation without this legislation; if for personal use, consumption, or storage, this legislation is vicious and unconstitutional. Contractual obligations may be materially impaired in this, that where a State law prohibits the sale of liquor and a citizen receives a consignment of liquor from another State, on credit, for his own use, the consignor would be denied his right to recover, within the State, in a suit for its value, if the bill makes liquor subject to the State laws as to use, consumption, and storage.

Why should citizens of different States be deprived of full and complete contractual relations? There can be no dispute but that where a citizen of a State mails an order to a dealer in liquor in another State to ship him a package of liquor, on credit, or C. O. D., or any other terms of payment, if the order is accepted and the goods shipped, the place of contract is within the State where the

acceptance takes place, yet the shipper would be deprived of his right to bring suit in the other State to recover therefor by the statute of a prohibition State. If the amount is less than \$2,000 the Federal courts are closed to him and he is deprived of his legal rights. Goods sent from one State to another for sale become a part of the general property of the State; this is not so when applied to goods so sent for use, consumption, or storage, and this bill can not lawfully change it.

In other words, where goods are brought into a State where there is a restriction, a tax, or some other regulation, the tax or the regulation does not become operative.

Mr. FOSTER. Until it is in such a shape as to be practically upon the market for the sale have you any decision as to the legislative power to affect the question of the place of contract?

Mr. WILDERMUTH. I have State decisions, but no Federal decisions on that.

Mr. FOSTER. No decisions of the Supreme Court of the United States?

Mr. WILDERMUTH. No; but it has been followed out universally. There is *Cooley on Contracts*, who says that the place of acceptance is the place of contract. Our Pennsylvania supreme court has also decided that where a citizen of New York—this was the case between a New York citizen and a Pennsylvania citizen—

Mr. FOSTER. It is a question of legislative power to designate one place as the place of the contract?

Mr. WILDERMUTH. Oh, yes; within the State; but as to the question of whether Congress has power to designate where the place of contract is in the contractual relations between the citizens of two States—is that what you refer to?

Mr. FOSTER. Yes.

Mr. WILDERMUTH. I do not think Congress has any power to arbitrarily state the place of contract in a matter of that kind.

Mr. FOSTER. You have no decisions limiting that?

Mr. WILDERMUTH. No, sir; I have no decisions on that. I don't think that question has been decided by our Supreme Court unless it was decided in the case of—I have here *Brown against Maryland*. On that decision was founded the decision of the Supreme Court in the case of *Leisey against Hardin*.

The principles held in the original package case of *Leisey v. Hardin* were evolved from the rule laid down by Chief Justice Marshall in *Brown v. Maryland* (25 U. S., 443).

That the point of time, when the prohibition ceases and the power of the State * * * commences, is not the instant when the articles enter the country, but when the importer has so acted upon it that it has become incorporated and mixed up with the mass of property in the country, which happens when the original package is no longer such in his hands; that the distinction is obvious between * * * which intercepts the import as an import on its way to become incorporated with the general mass of property, and * * * which finds the articles already incorporated with that mass by the act of the importer.

Therefore, it follows from this decision that notwithstanding Federal or State laws to the contrary no State has power to seize or intercept liquor transported into that State until after it has reached the hands of the consignee, and only then or thereafter if the con-

signee makes or attempts to make an unlawful use of the liquor, which unlawful use can be nothing less than a sale or an attempted sale of the article. He has a right to it for his own use, and he has the same right to make a gift of it to another as he would of a box of cigars or any other article. The prohibitionists reached the climax of their restrictive legislation when the Wilson bill was enacted, and can go no further in the shape of this or any other legislation having similar objects in view without contravening rights assured by the Constitution. The bill is a corollary and not necessary, particularly where constitutional questions arise involving Federal power over interstate commerce, State rights, personal liberty of citizens, common carriers, and the contractual relations between citizens of different States.

As to the question of a contract, as the law stands to-day, and as I am satisfied the law will be, even should this bill become a law, the place of contract under those facts as I have stated them would be in the place of acceptance, because there is no contract until the minds meet. I make an offer, but when that offer is accepted in writing there is some step taken toward the confirmation of that contract, and it is not in the power of the State or Congress to say where that contract shall take place. The rule of *lex loci* has always been—I know of no case to the contrary—at the place where the offer was accepted. There is a promise for a promise, an offer and an acceptance, to complete two divisions of the contract.

The question involved in this particular bill before you in its contractual relations is but the one, and that is the offer and the acceptance. I mail an order from a prohibition State to Illinois, a non-prohibition State, to a dealer asking him to send me a cask of wine. I say I will remit in thirty days, or send it C. O. D., or I may forward the money right there, so much. When he gets my letter, he may throw it in the waste basket. There would not be any contract or there would not be any place of contract. He may alter the conditions; he may answer my letter by mail. Still no contract. But the moment he accepts and fills that order and ships the goods, then it is a contract, and it is not in the power of Congress or a State thereafter to interfere in the relations between myself, as consignee, and the dealers, as the consignors, of that article of liquor, and when that article reaches me and I, after getting it into my possession, attempt to make an illegal use of it by selling it or offering it for sale within the State where I live, then the State law is effective, and this bill can not make the State law any more effective than it is on that point.

I don't know why the burden of proof should be thrown on a man that uses liquor, because the well-known principle of law has always been, and I hope it will never be changed, that every man is innocent until he is proven guilty. I know of no man that has ever been put on the rack simply because people thought he was guilty, and then he would have to start in and prove he was innocent, without an accuser. Who is the accuser in this great offense of using liquor. A lot of paid people. There are no representatives of those States who are the accusers, unless it is the father of the bill. But as to the full import and purpose of the bill, it is too far-reaching to be trifled with. And, gentlemen, in even considering a bill of this kind, when we look at those who ask you to make it law, it

strikes me as attaching too much importance to nothing, absolutely nothing, and a subject unworthy of your consideration.

I can safely say that forty years ago if anybody had brought a bill like this Hepburn-Dolliver bill before this same committee I believe that the originator, together with the bill, would have been thrown in the waste basket. They would have considered it an insult to their intelligence to have a bill as ambiguous as this brought before them. And then when you ask them what the bill means, they say, "Why, to stop people from drinking liquor in the prohibition States; they still persist in drinking it, but we hate the sight of anybody drinking liquor, and we want you to help us to prevent them from drinking it." If they had the power they would strike it right from the hands of those people, in their intolerance.

There are more people ruined by other things than liquor. Every time we read of a crime in the paper there is generally a woman in the case. We read about men going wrong and graft. It is not because of drink. Yet, according to the prohibitionists, it is all because of whisky. It is sometimes said that money is the root of all evil. It is just as logical to say that money is the cause of all evil as it is to say that the drinking of liquor or wines or beer is the cause of all evil. That is the logic of their side.

STATEMENT OF MR. GUSTAVUS A. KORB.

Mr. KORB. Mr. Chairman and gentlemen, I represent the Independent Citizens' Union of Maryland. We are not a campaign body, but we are a regularly incorporated body under the laws of the State of Maryland. Connected with this organization are 68 societies from Baltimore City and the neighboring counties. We have a membership of between 25,000 and 30,000, and all of them are legal voters of the State of Maryland. I do not believe there is one in that entire number who is in favor of this bill. I was requested to come here and speak before this committee, that this committee might not report this bill favorably.

The argument that was advanced by one of the speakers very seriously impressed me. Mr. Smith said that he wanted to be left alone to enforce the laws of Iowa. Gentlemen, that is what we want. We want to be left alone to enforce our own laws. If Iowa is not able to enforce its own laws it ought to repeal them. I was out there about sixteen years ago, and at that time there was a prohibition law on the statute books of the State, supposed to be enforced in the entire State.

From the arguments I heard here to-day I find that the State is gradually swinging the other way; that they are permitting liquor to be sold at some places in the State. Their own citizens, it seems, are going against the law; and, gentlemen, if this bill that has been proposed becomes a law, what will be the result of it? You are going to make the citizens of this country uphold that law that it seems the citizens of Iowa themselves do not want. They are going to have their beer and liquor, and you may pass laws as much as you please and you won't prevent them from getting it. You are simply wasting your time by enacting such laws as this.

We have in our own State of Maryland a law that is supposed to be very stringent as to selling liquor on Sunday, and yet I know that there is plenty of beer and whisky sold on Sunday in Baltimore; I know that a number of saloons do more business on Sunday than on any other day in the week. Although policemen go around in citizens' clothes and try to prevent that sort of thing, and make raids on saloons that sell liquor on Sunday, still it does not stop it. You can not stop it that way. And so, if you pass this law you will create that much more disrespect for law, because the people will violate it. They think you are robbing them of their personal rights; but they will violate the law, and they will get what they want to drink in spite of all the laws you may make. You will simply make them go about it in a little more secret way. You will create a disrespect for law by imposing upon people laws that they will not obey, and laws which will be violated.

I thank you, gentlemen, for your attention.

The CHAIRMAN. We have been sitting here all day listening to these speeches, and if there are any others who wish to speak they can have their remarks printed in the record.

Mr. BARTHOLOTT. I want to call your attention to the fact, Mr. Chairman, that there are fifteen members of Congress that have asked to be heard on this bill.

The CHAIRMAN. Yes; I know there are.

Mr. HEXAMER. And there are a few more speakers here who wish to be heard. It is impossible to prepare legal arguments at a moment's notice, you understand, Mr. Chairman. We have piles of letters from people that want to be heard here. As Judge Bode and Mr. Wildermuth have shown us, there are new standpoints from which to argue this question. I would therefore request that you give us a chance.

The CHAIRMAN. I could not anticipate what the pleasure of the committee will be on that question. We can not act on that now.

Mr. HEXAMER. We only pray that this be put on record as the National German American Alliance.

The CHAIRMAN. Yes. I have received this afternoon the names of a good many Members of Congress and several United States Senators who insist upon being heard. I have not sent for them, because I knew you gentlemen were here, and I thought as many of you have come from a distance it would only be fair to hear you to-day.

Mr. NICHOLSON. May I be allowed to make a statement in connection with this request?

The CHAIRMAN. Certainly.

Mr. NICHOLSON. I would say that if the hearings were to be continued, if we felt that there was any necessity for the enlightenment of the committee on points not fully covered or upon points that they might want information upon, we could bring a host of people here who would be only too glad to come—attorneys and others—and I am sure they would speak to the merits of the bill. It had been our understanding, however, that there was an agreement on the part of the committee, perhaps, to take final action to-morrow, and with that idea we only put forward a few of our speakers to-day, trying to round up our argument from our standpoint. I would like to go on record as not being in favor of any further arguments or statements.

STATEMENT OF MR. JOSEPH E. ADAMS, OF WILMINGTON, DEL.

Mr. ADAMS. Mr. Chairman, I represent the Wilmington branch of the German-American Alliance, and on behalf of said branch I want to enter a protest against the passage of this proposed measure. In Wilmington we have a population of about 18,000 Germans, that many in Wilmington alone, and there are quite a number in the State. In their behalf I protest against this bill, and I am sure that I am authorized to say for them that if it were put to a test not only the German-Americans, but the population of Wilmington and Delaware generally would be against it—there would be an overwhelming majority against the bill.

STATEMENT OF MR. ADOLPH TIMM.

Mr. TIMM. Mr. Chairman and gentlemen, we have quite a number of letters from our western branches who would like to be here to protest against this Hepburn-Dolliver bill. I am secretary of the National German-American Alliance, and I want to enter my protest in that capacity against the bill.

(Adjourned.)

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Friday, March 16, 1906.

The committee met at 10.30 o'clock a. m., Hon. John J. Jenkins in the chair.

The CHAIRMAN. We continue this morning the hearings on the Hepburn-Dolliver bill and the other bills relating to that subject.

**STATEMENT OF HON. RICHARD BARTHOLDT, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MISSOURI.**

The CHAIRMAN. Mr. Bartholdt, which bill are you going to speak with reference to? There are three bills.

Mr. BARTHOLDT. I am going to speak to the Hepburn-Dolliver bill, Mr. Chairman.

Permit me to say at the outset that what I am going to submit is merely a skeleton of the argument that might be made on the pending bill.

During the hearings in this and the last Congress—and I have attended all of them—it became evident to me that the members of this committee are not particularly anxious to hear arguments other than on the legal aspects of the case or on questions touching the constitutionality of the bill. This is quite natural, perhaps, in view of the fact that the committee consists exclusively of jurists. And yet to my mind the material questions involved here far outweigh the mere technical ones. It is important, of course, whether the bill under consideration can properly be fitted into the framework of our national laws and whether it is constitutional in the light of the decisions of the Supreme Court on this subject, for, I am sure, if the majority of this committee believed the measure to be unconstitu-

tional that would settle it, and there would be no need of any further argument.

I will go even further and say if only a reasonable doubt existed on the constitutional question the judiciary committee could not be induced to act favorably on a measure surrounded by such doubt. Any other committee of the House, from entirely innocent motives, might be prompted to report a bill of doubtful constitutionality, but the great Committee on the Judiciary, I am sure, would never stoop to such actions, because its members are too jealous of their reputation as constitutional lawyers, a reputation to which they usually owe their appointment to this committee. Moreover, we are all under oath to uphold the Constitution, and while lay members of Congress might innocently, as I said, do violence to it by their votes, no member of the judiciary committee could ever be found in that class. If anywhere in our great country the Constitution is safe I believe it to be safe in this sacred circle, the home of its friends.

I am not a practicing lawyer, but I have read law sufficiently to convince me that this bill is clearly unconstitutional. I am satisfied that an attempt to single out a special article of commerce and to decree that in the case of the article thus singled out the operation of the interstate-commerce law shall be interrupted at the boundary line and give way to the police power of a State so that that article can not be delivered into the hands of the consignee, amounts to a denial of the rights guaranteed by the interstate commerce of the Constitution.

But this is not the question I came here to argue. For the sake of argument let us assume the bill to be constitutional. Then instead of its being a question whether it is legal or whether it is constitutional, it becomes a question whether it is just and expedient, in one word whether it is right. It is admitted, I believe, that there are things which may be perfectly legal and constitutional and yet are morally and materially wrong. In other words, from the viewpoint of eternal right our consciences may prompt us to condemn what no law forbids, and that proves that there are considerations higher than those prompted by the mere technicalities and constitutions.

Some weeks ago the Hon. Joseph Cannon, our great Speaker, said in the course of an address at Philadelphia—I merely give the substance of his remarks—that in former years the great danger in our country consisted in the possibility of the concentration of too great power in the National Government. The danger to-day was the very reverse, namely, that the people of the several States were prone to neglect the exercise of the powers which they have under their State constitutions, and prefer to appeal to Congress on all possible and impossible occasions, asking the national legislature to do for them what their own legislatures were fully competent to accomplish.

Mr. HENRY. That argument might apply to the pure-food law and the quarantine bill that has been reported.

Mr. BARTHOLOTT. As far as the quarantine bill, where a question of national health is involved, I do believe in the principle of putting that in the hands of the Federal Government.

Mr. PALMER. The employers' liability bill and the antiinjunction bill also.

Mr. HENRY. Yes; it might be extended a little further.

Mr. BARTHOLDT. Is not the legislation sought by the pending bill exactly a case in point? According to many decisions of the Supreme Court the liquor traffic is completely subject to the police power of a State, and there can be no doubt but what it could be completely suppressed by that power.

The partial or complete failure of prohibition States to suppress it is admitted, but there can be but two reasons for such failure. Either the State is not exhausting its powers to that end, or the natural human desire for the consumption of liquor can not be suppressed—that is, its satisfaction prevented by law. In either case there is not the shadow of an excuse for interference by Congress. In the first instance, if a State can not furnish to this committee or to Congress complete proof of its inability to suppress the traffic referred to and of its entire good faith as to the exercise to the utmost limit of its own powers to that end, then, I claim, it has no moral right to invoke the power of Congress.

And if, on the other hand, practical experience has demonstrated all honest attempts at suppression to have been futile, simply because of the inefficacy of all law in the matter of preventing people from obtaining what they desire, then I say it is absolutely useless to provide additional legal machinery for that purpose, because to do so would have no other effect than to undermine, aye, destroy, the authority and dignity of national law in the eyes of the people. During the many hours I have listened here I have not heard a single argument on the other side which tended in any way to refute or break down the inexorableness of this situation.

What are the facts? Take the case of Iowa. Have the authorities of that State made every effort to suppress the liquor traffic? Have they exhausted their powers to do so? Not by any means. On the contrary the legislature of that State has passed a law—the so-called mulct law—which permits the traffic in counties desiring it under a system of fines which the dealers have to pay. In other words, the State itself legalizes the traffic in certain localities, and yet it comes here and asks Congress to aid it in the enforcement of its prohibitory law. This is the reason why I interrupted Judge Smith the other day when he argued here in favor of the passage of this bill, with the suggestion that he had not come with clean hands, figuratively speaking, of course.

If he had been able to show that his State was under a prohibitory law which was being strictly enforced in all parts, and that in spite of all honest efforts of the State authorities it was impossible to stamp out the traffic because of the importations of liquor from other States, then he might have a standing in court, or rather before this committee, but as a matter of fact there are breweries and distilleries running wide open in his State. Consequently, I say the continuance of the traffic there is certainly not due to a lack of national legislation, but to the operation of its own laws or their nonenforcement, whatever the case may be. Even if the Hepburn bill would ever be enacted into law, which under the circumstances I have just described would surely be an absurd and unwarranted undertaking, it would not help Iowa. And why not? Simply because it would be the easiest thing in the world to supply the dry counties from within its own boundary lines.

I can not resist the temptation to inject a little story here which illustrates most drastically what has been aptly termed the "hypocrisy of prohibition." It is contained in a letter which a St. Louis friend wrote me apropos my recent remarks on the floor of the House on the subject of prohibition. He writes:

If I had been aware that you were making a speech on prohibition, I would have given you a prohibition story of two brothers, both farmers in Iowa. John, the oldest, visited his younger brother Jake one day, and came just in time for dinner. Invited to partake of their meal, the lady of the house said: "Uncle John, we are aware that you use liquor in your family and at meal time, but you must excuse us, we only have water on the table; you know we are strict temperance people and do not make use of anything to drink which is intoxicating." Uncle John said, "All right, Jane, I am satisfied," and so the dinner passed off very pleasantly.

After dinner brother Jake and his two grown sons went out to their farm work, and as soon as they were out of sight Jane addressed Uncle John: "By the way, Uncle John, I know you are used to taking a drink; I keep a little bottle in my cupboard for medical purposes. My husband is such a strict prohibitionist that he will not permit anything to come into the house, but I believe in keeping some for medical purposes." After Uncle John had taken his drink he went out to the stable to take a look at the horses and cattle and found his brother busy feeding them. When he announced his presence, brother Jake says: "John, I am glad you are taking a look at our cattle and horses, but by the way, as you are used to taking a drink of whisky at home, I have a private bottle here that I keep for medical purposes. You know the old woman is very strict on temperance, and we allow nothing in the house." Uncle John and Brother Jake had their drink, and then John went to look at the growing crops and found the oldest son engaged in plowing corn.

Seeing his Uncle John coming toward him, he halted his team and said: "Well, Uncle John, I am glad you are taking a look at our farm. The crops are looking well. But, by the way, Uncle, you know the old folks are terrible on temperance and will not allow us young folks anything to drink in the house, and so I keep a private place in the field, secreting a box in the ground, so I can take a drink when I don't feel well, just for medical purposes only." Uncle John, having taken his third drink of whisky, went over to the other side of the farm where the younger son was working and was treated in the same manner to his fourth drink. The prohibition farm had four private saloons, to be used for medical purposes only.

Mr. BIRDSALL. Where was Uncle John from; was he from Missouri?

Mr. BARTHOLOTT. I suppose he was from Missouri. He might have been from Iowa.

Mr. LITTLEFIELD. That story is located for convenience in a great many places.

Mr. BARTHOLOTT. It is safe to say—and gentlemen in this room, if they were disposed to truthfully relate their own experiences, would bear out my assertion—that the same conditions prevail in nearly all prohibition States. And if this be so, why should it be the province of Congress to interfere? Why should the great national law-making body stoop to regulate the habits of the people and interfere in the affairs of the separate States which are perfectly competent to work out their own salvation?

Sumptuary legislation is odious at best; if undertaken by State legislatures it is a wrong and unjustifiable response to the appeals of people who have formed a habit of minding everybody's business but their own, and if seriously considered by Congress it is a humiliating spectacle and a perversion of the real functions of this greatest of all law-making bodies.

What is the sum and substance of the arguments advanced by the prohibitionists, who alone advocate the passage of this measure? You have heard the same dingdong so often that it is hardly necessary to repeat it. The States should be permitted to carry out the objects of their laws. As it is, their broth is being spoiled by shipments from the outside. How disgustingly hypocritical and unutterably absurd in the light of actual conditions as I have described them! But this is to play on the sensibilities and to catch the support of the states-rights man.

Mr. LITTLEFIELD. I suppose it is the individual instance to which you refer. Do you really seriously characterize, for instance, all people in my State in that manner? Do you think that is quite a proper thing to do?

Mr. BARTHOLDT. No; I do not; but I have heard from so many travelers in Maine that they can get all they want to drink; in fact, I have the evidence of one to the effect that the very first question asked him upon arriving at a hotel in Portland, Me., was "What do you want?" They had a private closet with whisky in it—

Mr. LITTLEFIELD. Everybody will have to concede that there is no kind of legislation that can absolutely stop the sale of intoxicating liquor—

Mr. BARTHOLDT. Unless you provide that the drinking of it shall be prohibited.

Mr. LITTLEFIELD. Then you could not stop it; you could not eliminate it under any circumstances. But what I want to get at is this. Your assertion was pretty general. I was wondering whether you meant it to apply to the people in my State as a whole. The assertion has been made a great many times about the hypocrisy of the people who feel that this is the proper kind of legislation, and I wanted to know whether you wanted to apply that as a general thing to the people in my State.

Mr. BARTHOLDT. I want to say that a great number of the people who are advocating the cause of prohibition are thoroughly sincere, and I will go even farther than that: I will say that it is desirable to limit as much as possible the use of liquor, but I do not believe in legislation trying to do that. I hold that there is another way of accomplishing that object, and that is to educate our boys to the true ideas of temperance. I believe that education alone can effect that. And I will cite an instance from my own personal experience. When I became 17 years of age, my father said to me: "Richard, if you wish to take a drink, if you wish to smoke a cigar, the doctor having said you are now old enough to smoke, go and take it," and that fact prevented me from doing it; because it was open to me, and because I could reach it any time I wanted it, I didn't desire it.

But this attempt that you are constantly engaged in, to suppress it by law, by the police power, and in every way possible, that course makes people desire it who otherwise would not desire it, or, in the language of Bob Ingersoll, if the Mississippi River contained nothing but whisky, nobody would want whisky. In other words, it is a question of education, not a question of legislation.

Mr. LITTLEFIELD. I hope Bob was nearer right on his theology than he was on that assertion. My only suggestion was this. I do not make it personal. I do not remember that anybody who has

been here urging this legislation has said anything unkind, or that in any way could be construed as a reflection on the people who oppose the legislation—and there is an honest difference of opinion about it. At least nobody could charge me, I think, with having said anything unkind about the opponents of the legislation; but I have sat here in this committee room and heard over and over again these general, uniform charges of hypocrisy on the part of everybody who supported the legislation, and I did not think you would probably want to stand behind so broad and sweeping a charge as that.

Mr. BARTHOLDT. Is it not natural that the people who come from the masses of the people and who are forming their opinions by what they read and see, is it not natural that they should form such opinions when they find that, for instance, in the matter of the canteen, nearly the whole House votes in favor of abolishing the canteen when they are satisfied—the members of Congress are satisfied—that the canteen is absolutely necessary to enforce discipline in the Army; when the unanimous sentiment of the men who run the Army of the United States is to the effect that the abolition of the canteen was the greatest outrage and the wrongest thing that has ever happened in connection with the Army.

Mr. LITTLEFIELD. I fundamentally disagree with you on both propositions—

Mr. BARTHOLDT. I know you do.

Mr. LITTLEFIELD (continuing:) And I am willing you should entertain your view, but I want to state that in my judgment I do not think the facts sustain the assertion you make, and I think that will wash out. Of course, I concede your right to entertain your view, but when you make that general assertion my judgment is that the facts do not begin to sustain you.

Mr. BARTHOLDT. I was going to argue to show that it was quite natural to form the idea that there is hypocrisy involved in this case when we see men drinking who then go and vote the other way.

Mr. LITTLEFIELD. I have no objection to their continuing the assertion under the circumstances, and I shall continue to treat them as politely as I have in the past.

Mr. BARTHOLDT. I believe in practicing what you preach, and that gives us a right to charge hypocrisy—

Mr. LITTLEFIELD. I have no objections to their continuing the sweeping, broad assertion, if they want to, as I said.

Mr. BARTHOLDT. And of course what I say about hypocrisy is impersonal altogether. I said that their argument is that the States should be permitted to carry out their laws. This is simply a play on the sensibilities, and to catch the support of the States-rights man. How narrow the vision of these apostles of prohibition must be when they can not even see that the safety of the doctrine of States rights lies in the rejection instead of the passage of this bill. If you say, my Southern friends will allow the nation to supply the force which the State fails or refuses to exercise, though the Supreme Court says it is competent to exercise it, then I predict it is only a question of time when you will be entirely governed from Washington instead of from your State capitals.

But you say no; in this case we want the national power to halt at our boundary lines in order to give full sway to the police power

of our State. Well and good, but don't you see that the supremacy of your police power would be more firmly established and better demonstrated by conquering the evil in spite of the concurrent operation of the interstate-commerce law? The evil you complain of exists not because of a lack of State authority, but because of a failure to fully exercise it.

One other point, Mr. Chairman, that I desire to submit to the calm consideration of the committee. It has been argued here that the question of prohibition is not involved in this bill. Honestly, these people who make this assertion must take us for fools. The National Reform Bureau which, by the free use of the mails—I shall not now go into that—has worked up the artificial sentiment in favor of this measure, is what? It is the national prohibition lobby maintained here year in and year out to influence and intimidate Congressmen. No one but pronounced prohibitionists have appeared in favor of the bill, and no one but outspoken opponents of prohibition have appeared against it. But aside from that. The bill is intended to aid in the enforcement of prohibitory laws and to prop up the tottering system of prohibition wherever it is enforced.

This is admitted by both sides alike to be its only object. To say, then, that the principle of prohibition is not involved is the same as if it were claimed that a bill fixing the rate of duty on imports had nothing to do with the tariff. You may put it on the mere technical ground of enabling the States to enforce their local laws. What feeble organisms these States have gradually become! But you can not escape the responsibilities of passing on the merits or demerits of prohibition in taking action on this measure. There is absolutely no getting around the fact that the members of this committee or the House who vote for this bill go on record as favoring and sanctioning the principle of prohibition. Favorable action upon it will have the effect of injecting into national politics an issue which heretofore has been foreign to it, because never before in our history has Congress so directly dealt with this question, and it means the injection of the same issue into the campaign of every candidate for Congress.

Mr. LITTLEFIELD. What is the reason they did not do the same thing when they passed the Wilson law? The Wilson law on its face was undoubtedly intended to do the same thing as this is, and until the Supreme Court held otherwise everybody thought it did.

Mr. BARTHOLDT. I do not look upon it in that light at all. I think the Wilson law was right and the decision of the Supreme Court sustaining it was right.

Mr. LITTLEFIELD. This bill undertakes to do this, Brother Bartholdt. It practically undertakes to put the legislation of the United States just where everybody reading the Wilson law supposed it was put until the Supreme Court of the United States, with great ingenuity, discovered the other way. I defy any man that reads that law to say he would not reach the conclusion that that law is meant to reach what it is intended this pending legislation should reach. Of course the Supreme Court reached another conclusion—in my judgment by a very artificial construction—but on its face this Wilson law meant exactly what this pending bill is meant to cover. Where was any disturbance created in the country by the passage of the Wilson law—political or otherwise? I haven't heard of any.

Mr. BARTHOLDT. The Wilson law provided that no shipment of liquor could be seized before its delivery into the hands of the consignee.

Mr. LITTLEFIELD. No; it provided nothing of the kind. Here is what it provided. Here is what it says:

That all fermented, distilled, or other intoxicating liquor or liquids transported into any State or Territory or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

"Shall upon arrival," that is what the law said. The court said that they did not arrive until they reached the consignee, and nobody dreamed of that until the court so held. Now, where was the political disturbance that occurred in the country after the passage of that law, containing that plain language?

Mr. BARTHOLDT. I want to call Mr. Littlefield's attention to the difference. The Wilson act was passed without the people being practically aware of it. They have now been aroused; not only have they been aroused but they have become indignant at these constant attempts on the part of a certain element to restrict the personal liberty of citizens, and if nothing was said at the time that law was passed that is no evidence that there is not a very strong feeling in this country against this legislation. This feeling has aroused; we have to deal with it; we will be confronted with it when we go home to our constituents.

Mr. HENRY. It was first presented in 1888 and was discussed at length. It then failed. They did not get it through for two years after that. In 1890 it was passed, and there were elaborate reports made by Senator George and other Senators on that proposition, and it was discussed very fully, I think you will find, if you will investigate that.

Mr. LITTLEFIELD. And after that the Supreme Court in *Leisy v. Hardin* surprised the legal minds of the world in their decision and overruled practically every decision of the Supreme Court on that subject that had been rendered up to that time. Of course, that does not militate one way or the other, except upon the question of the pronounced disturbance that is likely to take place in case this bill is passed.

Mr. BARTHOLDT. It exists now.

Mr. LITTLEFIELD. I grant you that there is more agitation about it now than there was then.

Mr. BARTHOLDT. Of course, some of us may regard this disturbance as desirable, and for one I am not afraid of it. I am not afraid to meet the issue at home, but others may not feel quite so comfortably about it.

Mr. LITTLEFIELD. I do not think anybody wants to make an unnecessary disturbance about anything.

Mr. BARTHOLDT. Certain it is that this question will wipe out old party lines, and for whatever action is taken here or in the House the credit or blame will not be laid upon parties but upon individuals. Hence it will do for any part to play politics, for one to try and put

the other in a hole, for I know the temper of the people whose representatives you have heard here—and perhaps I am in a position to speak advisedly on this matter—their political action this fall and possibly in the future will not be determined by the Republican or Democratic label, but by the action which individual members will take on this bill. The National German-American Alliance is an organization with a membership of a million and a half voters from all parts of the country, and behind them stand numbers again as large.

The alliance is not organized on political lines, but its members are ready to take independent political action. They have watched with rising indignation the tendency in our country to throttle personal liberty, and the subserviency of both parties to the illiberal and fanatical element and its unreasonable demands, and have come to the conclusion to assert their political rights in defense of their cherished ideals and irrespective of any other question which the two parties may bring up. And let me say further, Mr. Chairman, it is a mistake to suppose that this new party of personal liberty is actuated by any material interests. Aye, the supposition is an insult to the men who are engaged in what I regard as a purely ideal movement, a movement which has for its object the defense of American liberty and its well recognized guaranties of individual rights against the un-American, undemocratic, and fanatical attempts to tyrannize the majesty of the individual.

It is also a mistake to suppose that the views which were expressed here on this question were confined to Americans of German birth or descent, though it is true that the majority of those who appeared before you in opposition to this bill belonged to that element. Perhaps the German feels more strongly on this question than others, because love of individual liberty is his national trait, and from this trait, let me add, parenthetically, has sprung all the liberty which is the blessing of the world to-day. Not from Rome do these ideas emanate, as some erroneously suppose, but from the forests of Germany. And it would be an insult to the American people if from the fact that the opposition to this bill was almost exclusively confined to Germans here you were to draw the conclusion that it is really confined to them.

There are millions of Americans who will vote right on this question when it is presented to them in its proper light, and I have so much confidence in the development along truly liberal and American lines of this country and its destiny as the lasting home of the free to be convinced that the spirit of intolerance and hypocrisy will vanish when once the banners of the friends of liberty are unfurled.

I sincerely hope, Mr. Chairman and gentlemen, that no further action on this bill may be taken.

The CHAIRMAN. Do you desire to be heard, Senator Thurston?

Mr. THURSTON. I am merely an onlooker. I am general attorney for some of the express companies of the United States. I have not been asked to come here to say anything on this legislation, but possibly before you conclude your hearings I might like to say a few words about some features of the Williams bill in regard to its constitutionality, and also with respect to another feature of it, which, I think, should be amended in some minor respect if it should be reported.

The CHAIRMAN. You are not ready this morning, as I understand?

Mr. THURSTON. No; I just came in from Pittsburg this morning, and I have no definite advice from my clients, and if I had anything to say I would prefer to say it at some other time.

Mr. LITTLEFIELD. The hearings are likely to be closed by Tuesday next. Will that suit your convenience?

Mr. THURSTON. Oh, yes; if I should have anything to say it will not exceed ten minutes. I don't know but what I could say what little I care to say right now.

The CHAIRMAN. We will be glad to hear you, then.

STATEMENT OF EX-SENATOR JOHN M. THURSTON.

Mr. THURSTON. Mr. Chairman and gentlemen, I wish to say in advance that none of the express companies, so far as I know, desire to be represented before this committee in opposition to the proposed legislation. Their situation is not a pleasant one to themselves. They are common carriers, and in the absence of any legislation limiting their obligation to the shipping public they are undoubtedly obliged to take liquors the same as any other merchandise that is not under the ban of any general law of the land regulating interstate commerce; they are undoubtedly obliged to take it upon the same terms that they take other merchandise, and they would subject themselves to damage suits of all sorts if they undertook to put in force any regulation which limited their duties as common carriers.

And I may say here, while I can not speak for all the express companies of the country, I can say at least for one such company, that while legislation on this subject might somewhat interfere with their revenue—to what extent I do not know—that it might not be objectionable, for the reason that at the present time it is a very serious matter the situation they are placed in; their shipments in some of the States are seized and have been seized upon arrival at destination and before delivery, and they are already now confronted with a great deal of litigation from different parts of the country, a litigation which they certainly do not solicit or invite.

Referring to the Williams bill, however, that I wish to speak especially upon. It seems to me in the first place that it is not a constitutional act. Until liquor is generally placed by the law of the nation under some ban to distinguish it from any other merchandise, the transportation of it is certainly not unlawful and the obligation to take it by the common carrier is exactly the same obligation that lies on the common carrier to take any other merchandise, at the point where it is shipped, from which it is shipped.

Now, my judgment is—it may not be a mature judgment, but my judgment is—that it would be unconstitutional for Congress to single out any one article of merchandise that is not under the ban of the national law and provide that as to that one particular kind of merchandise the common carrier shall enforce a rule that it did not enforce as against any other merchandise received by it. That is, to deny them the right or really to compel them to enforce a rule that they must take shipments of liquor sent from a State where the traffic in liquor is legal and take it with a demand of prepayment of charges in advance; and I think that would be unconstitutional unless that same requirement was made as to every article of merchandise that they received and transported.

Mr. LITTLEFIELD. What provision of the Constitution, in your judgment, does it contravene?

Mr. THURSTON. I think it is class legislation.

Mr. LITTLEFIELD. Then that provision of the Constitution that provides that every person is entitled to equal protection of the law—would it be under that?

Mr. THURSTON. I think so.

Mr. LITTLEFIELD. That only applies to the States. That is found in the first section of the fourteenth amendment, which expressly provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws. To be perfectly frank, I had not any doubt myself that that provision, applying to the Federal Government, was to be found in the Constitution; it ought to be, but I can not find it. I only wanted to get your notion of it.

Mr. HENRY. Do you know of any decision or authority holding that liquor is not a legitimate article of commerce; don't they all hold that it is a legitimate article of commerce?

Mr. THURSTON. There is no question about that. I don't know but what Congress would have the right to pass laws making liquor contraband; I don't know about that, it is doubtful in my judgment, but in the absence of any national law a bottle of liquor in the State of New York sold there under the authority of law is undoubtedly a legitimate article of commerce; there is no question about that. That has been held repeatedly, and that is really a statement of first principles.

Mr. LITTLEFIELD. There is no doubt about that proposition.

Mr. THURSTON. And while I am not prepared to make a thorough constitutional argument here, I do think that there are provisions in the Constitution of the United States which would prohibit Congress—or perhaps I might say that there is no authority given Congress under the Constitution of the United States to discriminate and compel companies to discriminate in the terms and conditions upon which they shall receive and transport legitimate articles of commerce. It might be that as to dynamite, which would be dangerous along the line, they might make certain requirements as to the cars in which it should be transported, or something of that sort, or anything that would be dangerous to the lives of people and might involve destruction of property, while the article was in process of transportation; but that rule would not apply merely to an article which a State might deem was injurious to the welfare of the people when it has arrived and applied to individual use.

Mr. LITTLEFIELD. Does not the Champion case go pretty close to that? That is the lottery ticket case.

Mr. THURSTON. Well, possibly it does, possibly it does. Now, speaking for myself a little further, I do not think that there is any real reason why a penal provision should be enacted against the transportation companies of the United States in regard to this transportation of liquors. I think that the attention of Congress, if it is to be directed at all, should be along the line of permitting the States in whatever way you please, when shipments reach the States, to deal with the transported article and that the action should not be di-

rected in a general way against the express companies by reason of their receiving and transporting goods of this character under the same terms and conditions that they do all other goods. Speaking at least for one express company, they would be entirely willing to-day, if they thought they could without legal liability, to put in force a rule exactly such as is provided for in this Williams bill, they would be more than willing.

Mr. BRANTLEY. I have a letter from the general counsel of one express company advising me that for two years his company has refused to handle liquors C. O. D. on his advice.

Mr. THURSTON. I presume that is true, but there are certain other companies whose legal advisers say to them, and I believe it is the law, that they can not refuse, they can not put in force an order of their own in regard to the terms and conditions on which they will receive one class of merchandise which is not dangerous along the line of transportation, which requires no other care, no other consideration than any other kind of merchandise, that they can not put into force a rule as applied to that which does not apply to all their shipments of merchandise without subjecting themselves to damage suits from the persons who desire to ship.

Mr. LITTLEFIELD. Does that go as far, Brother Thurston, as preventing them from insisting upon payment of the transportation charges in advance?

Mr. THURSTON. No; but I think they must make the same rule as to all, that is the only point.

Mr. PALMER. Upon what principle is that theory grounded?

Mr. THURSTON. It is the general ground of your railroad rate bill, the same conditions must be given by every common carrier to all shippers.

Mr. PALMER. But they could say all shippers of whisky should pay their freight down and all shippers of other things could be trusted.

Mr. HENRY. Was it not expressly decided in the case of *Bowman v. The Railroad* that they must accept it as other goods?

Mr. THURSTON. That case only decided the general principle that they must accept this merchandise the same as any other, but I think the broad rule of law laid down in that case goes to the full extent of saying that they can not discriminate in their methods of doing business on any ground of picking out an individual article of any kind and enforcing one rule as to that and not as to all classes of merchandise that they transport.

Mr. BRANTLEY. Do not all common carriers classify the freight they are to handle?

Mr. THURSTON. Yes.

Mr. BRANTLEY. And one rate for one class and another rate for another class?

Mr. THURSTON. But that does not go to a question of classification at all. A railroad company can classify a large district, and separate rates under a single classification; they can in certain instances provide as to what kind of cars certain merchandise shall be shipped in. That is for the safety of transportation along the line. They can also provide as to how certain kinds of trade shall be done up.

Mr. CLAYTON. Do they not require now on certain perishable goods shipped by express that the freight be prepaid?

Mr. THURSTON. Yes.

Mr. CLAYTON. Could they not require that in the case of liquor as well?

Mr. THURSTON. No; that does not come under that rule.

Mr. CLAYTON. What is the difference in principle?

Mr. THURSTON. The difference in principle is this. You take a perishable article and transport it along a railroad line on a C. O. D. bill of lading, and the goods may not be in a condition so that the goods themselves would secure the railroad company in the collection of the bill.

Mr. CLAYTON. Could not your company say then that it may subject you to annoyance or seizure of the liquor when you take it into the prohibition State, and for that reason could not your company make a rule requiring free payment on such shipments?

Mr. THURSTON. I do not think that would be an element that could be considered. I think the only question of classification and the only question as to the rules that must be laid down in respect to goods covers the mere matter of transportation; it begins when the goods are received and ends when the goods reach their destination, and I do not believe that it would be possible for them to adopt one rule with respect to this class of merchandise that they do not as to others. I think I can say with authority that some of the express companies would be entirely willing to-day to make such a rule as that if they thought they could do it legally and apply it only to this class of goods.

Mr. LITTLEFIELD. I judge your companies would rather welcome the passage of this legislation, which proposes to authorize the States to exercise their own police powers within their own borders.

Mr. THURSTON. I am not saying that, but I am not here objecting to the legislation at all. As a matter of fact, one of the great express companies at the time of the Louisiana Lottery, when it was a very profitable business for them to take the lottery tickets and transport them into different parts of the country, when it was held as a matter of law that they were required to take them (until Congress acted in the matter), refused to take them. They did not subject themselves to any damage suits in that respect, for the reason, I suppose, and the only reason, that the lottery company in Louisiana did not care to go into court over the question of damages and make a disturbance over the affair.

Mr. LITTLEFIELD. They took the hazard of possible suits?

Mr. THURSTON. They took the hazard of suits, yes; and they did it because they were in harmony with the sentiment of the country at large on the question of lotteries. And I am not here now even objecting to the Williams bill, except as I want to see that whatever legislation is enacted will thoroughly protect these express companies when it comes to being enforced, and, as I said, I do not see why they should be treated as if they were doing wrong or were proposing to do wrong, and be made the subject by this legislation of prosecution in case they did not happen in all instances to strictly comply with the law.

And another suggestion I was about to make as to the language of this bill. The first section, that express companies and other common carriers are prohibited from importing into the United States from

any foreign country. Now, I call your attention to that language, and I ask you as to whether that is not a general prohibition, not limited by the after clause of the act with respect to liquor transported from one State into certain sections of another State; whether the bill as it now stands, as it is drawn, if that is not in the first place, standing separately and distinctly by itself, an absolute prohibition from the importation into the United States from any foreign country of any liquors on a C. O. D. basis; and if the bill be reported I would suggest a very careful inspection of the language of the first section and an amendment, if you deem it necessary, so as to make it very clear that you do not lay down any general prohibition against a C. O. D. shipment from a foreign country into the United States.

Mr. PALMER. That is what it looks like; there is no doubt about that being the construction now.

Mr. HENRY. Yes; I do not think there is any doubt about that.

Mr. THURSTON. I do not know that that affects the express companies, but if that is what is intended, as a public-spirited citizen I should think that was very unwise legislation.

Now, the only point I desire to suggest is this. Here is an absolute prohibition, and a penalty attached for its violation for transporting C. O. D. any spirituous, vinous, or malt liquors from one part of a State into a section of another State where it runs in conflict with certain laws. I think at least that that provision should be modified along the same lines as the general legislation of the different States is, and as the legislation of the District of Columbia is in regard to, the sale of liquor to minors. There ought to be some such word as "knowingly," because without it shippers of liquor can put up liquors under all sorts of forms and under some other classification, and the common carrier can not open it; the common carrier does not know what it is taking, the agent at the receiving station can not go into a process of inquiry and cross-examination of the man who brings his package in there; brings a box there.

It is marked one thing and it may contain any other thing. The common carrier doesn't know it and can not know it, the employee of the common carrier doesn't know it, the man receiving it does not know it, the employees engaged in transporting it do not know it and the man delivering it to the consignee does not know what it is, and the company ought not to be held liable penally for unknowingly violating a statute of this kind. It is like the case of selling to minors. You can not tell when a young man comes into a liquor place whether he is 20 years of age or whether he is 22 years of age; he may look anything. A man 25 may not look over 18 or a young man 18 may look 25, and if appearances are such that the liquor is sold in the honest belief or in the absence of any contrary proof that the young man is 21 years of age it has never been the policy of the law to inflict a penalty under circumstances like that on a man who acts with apparent honesty and with the purpose to abide by the law; and so I say here there would be no question and nobody will anticipate that there will be any question—

Mr. TIRRELL. That is not the law in Massachusetts.

Mr. THURSTON. Possibly not.

Mr. TIRRELL. And never has been.

Mr. THURSTON. Possibly not; it is a law of Congress that you have enacted for the District of Columbia.

Mr. TIRRELL. The Massachusetts law makes it incumbent upon the seller to know about it; he takes his chances.

Mr. THURSTON. Well, I am not arguing that in that particular case, that that law of yours is not a wise one, because you are engaged in a matter there that affects the whole moral welfare of the community—selling liquor to a minor—and in this case the express companies do not even have the opportunity that the liquor dealer has to inspect the article or to investigate; they can not stop and investigate as to the contents of a package, it would be utterly impossible and nobody will believe, I think, for a single moment that they will seek to evade the law, if the law should be enacted, by taking shipments so disguised with any knowledge on their part that they are disguised, and I don't think that this law should be made so drastic as it is now drawn in that respect.

Mr. PALMER. Publicity is very fashionable nowadays. How would it do to put in a provision that every fellow who ships a box of liquor should put on the outside what is in it?

Mr. THURSTON. Now you are getting down to business. I think that might be a good idea, and none of the express companies so far as I know would object to your making it a penal offense or a misdemeanor for a man to ship liquor disguised and marked something else.

Mr. PEARRE. Not being permitted to examine the package at all when it is delivered to them, would it not destroy the effect of the law entirely if the word "knowingly" were put in; in other words, could not the shipper of whisky take advantage of such a provision in the law—"knowingly"—to nullify the law?

Mr. THURSTON. As Mr. Palmer says, it might be well to compel the shipper to designate what a shipment is.

Mr. PALMER. The complaint is that the express companies ship a hundred jugs of liquor to John Smith or Richard Roe or anybody else at some station in Iowa, and then let their agent sell it to anybody who is willing to pay the charges on it; that is what the express companies are doing, and in that way every agent who does that is a retail liquor dealer.

Mr. CLAYTON. Will you let me read a letter sent to Mr. Hepburn of Iowa a few days ago?

Mr. THURSTON. Certainly.

Mr. CLAYTON. The letter is addressed to Mr. Hepburn and is dated Sylvan Grove, Kans., February 26, 1906.

SYLVAN GROVE, KANS., *February 26, 1906.*

HON. HEPBURN, M. C.,
Washington, D. C.

DEAR SIR: Inclosed find some literature and proposition sent me by a Kansas City, Mo., whisky firm. This is only one of many such propositions I have received to serve the liquor interest. Every effort is made by these concerns to defeat the purpose of our prohibition laws. The people here deem the Hepburn-Dolliver bill to eliminate the C. O. D. liquor traffic from prohibition States of utmost importance, and I would urge that no stone be left unturned to accomplish its passage.

Yours, truly,

E. L. BLOMBERG, *Agent.*

ASSOCIATED INDEPENDENT DISTILLERS
AND WINE GROWERS OF AMERICA,
Kansas City, Mo., February 7, 1906.

Mr. E. L. BLOMBERG,
Sylvan Grove, Kans.

DEAR SIR: Some weeks ago we wrote you asking whether or not you would be interested in a proposition we wished to make you whereby you could greatly increase your income, and which would in no way interfere with your position. We inclosed you a postal card for reply. We received the postal very promptly, stating that you were interested and would be pleased to hear from us. We took great pleasure in submitting same to you, but have as yet failed to receive a reply as to whether or not you cared to accept it, although we have written you several letters asking you to kindly advise us of your decision.

We can not believe that you would pass up an opportunity of this kind, and are writing you to-day asking that you again consider our proposition. Consider it carefully, and you will note that we are not asking you to do anything that in any way infringes upon your duties as express agent. All we ask is that you kindly furnish us with the names of parties who are, or have been, receiving shipments of whisky through your office. We will then write these parties letters, sending them our circulars, which contain some excellent offers, and request that they give us the pleasure of sending them a trial order. Of the business we receive in this manner you receive a benefit, for, as stated in our former communications to you, we will make you a present of 50 cents for each package delivered.

Remember, we are not paying you a commission for making delivery of our goods, but are merely making you a present to show our appreciation of your efforts in our behalf in seeing that our goods are delivered promptly to the man to whom they are shipped.

Some express agents have received as high as \$150 in one month. We submitted our proposition to another agent at the time we submitted it to you, who accepted same and immediately sent us a large list of names. We wrote these parties and were able to secure a great deal of business from them, and last month we had the pleasure of sending this agent \$117.50. You may not be able to do this much business in one month, as the traffic in our line of business may not be so great through your office, but it makes no difference how small it may be. Can you afford to throw it away?

Thanking you in advance for a favorable reply, we beg to remain;

Yours, very truly,

M. CALMAN, *President.*

CONFIDENTIAL

We have assisted several hundred express agents to materially increase their monthly income, and we can and will increase yours without taking any of your time and without any interference with your regular duties. Now, will you let us?

OUR PROPOSITION.

We will give you 50 cents on every package of our goods which passes through your office—not for one month, but for as long a time as you care to act as our agent. We don't ask or want you to solicit orders for us. All

we want is to secure your cooperation in the execution of a plan by which we expect to produce results in the way of new customers. We want new business in your locality, and we have come to you with our proposition for the reason that we realize we can turn the information in your possession into dollars and cents for ourselves and for you.

THE NAMES OF WHISKY BUYERS.

You know the name of every man who buys our kind of goods away from home. It all has to pass through your hands. This business is going through your office now without returning you one cent, and, whether you believe in the whisky business or not, you can not stop the importation of "wet goods" into your community; moreover, you are under obligations to your company, because of your position, to make the same delivery of such packages as you do of other express.

Now, we want to get some of this business (and we will get it if you will help us), and we are willing and anxious to pay you 50 cents for every package which we ship to your station C. O. D., and which is taken out by the consignee. What we want you to do is this: Send us a list of the names of all the people who have had a whisky shipment during the past year, or as many as you can, and we will endeavor to get these people as customers.

WE WILL SEND A SAMPLE FREE.

To all of the people whose names you present us with we will make them a proposition to send them a good-sized sample bottle of our goods free. We believe that the larger per cent of these people will send for the free sample, and after they have tried our goods we don't think we will have any difficulty in making them permanent customers. Our goods are far superior to any being sold by other houses from 20 to 30 per cent higher in price. We know this to be true. At any rate, we are willing to risk sending a sample free in the hope of getting their business. We would not do this if we did not have perfect faith in our product.

YOUR PROFIT.

Your profit will be commensurate with the amount of business we get from parties whose names you send us. Upon every shipment you get 50 cents. You do not have to risk to our honesty to get your money or wait upon our pleasure to send it to you. We will permit you to make out a new C. O. D. wrapper on each shipment for the amount specified therein, less your commission; or we will send to you some coupons like the inclosed, which we will accept for the amount of your commission with the balance of the returns, or we will send your commission at the end of the week or the month by draft or registered letter, whichever way suits you.

IN CONCLUSION.

Now, you know how much business is going through your office. How much would it amount to in a year if on the greater portion of it you were getting 50 cents a shipment? Run over your books and figure this up and you will be surprised to see what it will amount to. We have one agent who delivered 1,500 packages last year. Think what this meant to him. And he was doing no more than was required of him by his company or what he would have done without any understanding with us. Our plan does not conflict with any rule or regulation of your company, and you are not violating any law of the land.

Te want to make you money. We will make you money; just give us a chance. Send us the names; leave us to get the business and increase your income.

ASSOCIATED INDEPENDENT DISTILLERS
AND WINE GROWERS OF AMERICA.

M. CALMAN, *President.*

Mr. CLAYTON (continuing). That is the business that is complained of and that is the business that Mr. Williams apparently seeks to break up by the bill he has introduced; and it is not legitimate business.

Mr. THURSTON. I have no doubt about the right purpose of this bill, and business people who would undertake to make such arrangements with agents of express companies are engaged in a very vicious practice; and I think it would go without saying that if an express company or one of the railroad companies in the United States discovered that one of their agents was engaged in anything of that sort he would not keep his place two minutes.

I don't think there is an express company in the country that would tolerate any action of that sort on the part of their agents, and they are not soliciting this business, and they are not objecting to any just and fair regulation of it as in your wisdom is right and will accomplish the moral purpose of your legislation; but if anybody is going to be penalized it at least ought to be the man who ships liquor in a package under a false designation and in such a package that the express company where it is received or where it is delivered can not ascertain what is in it, the only evidence of what it is being shown by the bill of lading. If it were otherwise they would have to adopt a rule that they would have to open every box of merchandise that was shipped and examine the contents before they would accept it.

Mr. PEARRE. Have you examined the Hepburn bill?

Mr. THURSTON. Yes.

Mr. PEARRE. Do you present any objections to that bill?

Mr. THURSTON. I have no personal objection to that bill and I do not know of any interest that I represent that has any. I am not authorized to say that anybody I represent is in favor of that bill, simply because it has not been so stated to me.

Mr. PEARRE. But you are not offering any opposition to it?

Mr. THURSTON. No, sir; I am not offering any opposition to it at all.

Mr. CLAYTON. Calling your attention to the so-called Hepburn-Dolliver bill as amended and as reported favorably from this committee last session—do you remember that bill?

Mr. THURSTON. No.

Mr. CLAYTON. It is pretty much the same as the present Hepburn bill, except that it had an amendment to it which seems to be omitted from this bill. When you get through with your testimony I will get you to read it, and then recall you. It has section 2 that I believe was omitted from this bill—

Sec. 2. That all corporations or persons engaged in interstate commerce shall, as to any shipment or transportation of fermented, distilled, or other intoxicating liquors or liquids, be subject to all laws and police regulations with reference to such liquors or liquids, or the shipment or the transportation thereof, of the State or Territory in which the place of destination is situated, and shall not be exempt therefrom by reason of such liquors or liquids being introduced therein in original packages or otherwise; but nothing in this act shall be construed to authorize a State or Territory to control or in anywise interfere with the transportation of liquors intended for shipment entirely through such a State or Territory and not intended for delivery therein, or to control, or in anywise to interfere with the delivery in the State or Territory of any bona fide interstate commerce shipment of liquor or liquids intended solely for the personal use of the original consignee, and not intended for sale in said State or Territory in violation of the laws thereof.

Mr. THURSTON. That last part being the amendment?

Mr. CLAYTON. Yes, sir.

Mr. THURSTON. All I can say about that is that if I lived in a prohibition State I should be very glad to have that amendment.

Mr. CLAYTON. You have read the case of *Vance v. Vandercook*—you are familiar with that?

Mr. THURSTON. I do not care to discuss the general policy of this legislation. I believe myself in the right of States, as far as they can, taking care of their own local conditions; I have never individually been in favor of prohibition, and have fought that issue out in my State, but I have always been in favor of the strictest regulation of the liquor traffic and local option, each community deciding for itself and its own people as to what they will do as to the sale of liquor.

Mr. BRANTLEY. I would like to ask you if your attention has been called to another bill, 16479—one that I introduced—that also affects express companies?

Mr. THURSTON. No; it has not.

Mr. CLAYTON. That is intended to meet the evil, to divorce the transportation from the sale of liquor.

Mr. BRANTLEY. To let the State control the matter of selling it.

Mr. THURSTON. I would like to look at that a little before I would express my views on that.

Mr. BRANTLEY. I would be glad if you would. In most of the States the courts held that the place of delivery is the place of sale; of course, the United States Supreme Court differs with that.

Mr. THURSTON. Yes; it differs in regard to this special subject on that line.

I do not know of any further views I can suggest. As I said before, I want it distinctly understood that there are no clients of mine who are objecting to general legislation such as you may deem it wise to effectuate, the purpose you are seeking to accomplish. We would only like to be protected constitutionally and legally and not be subjected to any severe burdens or penalties under any legislation for the commission of anything which we might do without having the power to protect ourselves.

Mr. BIRDSALL. I wanted to get your objection from the constitutional point clearly in my mind. If I understand your position, your objections are substantially these: That an express company, like a railroad company, being a common carrier, when it offers its services to the public, offers it to all upon equal terms, and every individual has impliedly a right to this service upon the same terms?

Mr. THURSTON. That is it.

Mr. BIRDSALL. And as it would be incompetent for the express company to make one rule to govern one individual and another rule to govern another individual, on the same basis likewise it would be unconstitutional for Congress to make that distinction.

Mr. THURSTON. That is it.

Mr. BIRDSALL. It goes rather to the right of the individual than to the right of the common carrier.

Mr. THURSTON. And my proposition illustrating that is that by rules and regulations of classification or directing the manner in which goods shall be carried and how they shall be boxed or protected or presented, and all rules and regulations of that sort, are only based upon the right of the common carrier to protect life and prop-

erty and to secure its own convenience in the matter of the transportation itself, and no such classification and no such regulation could be based upon conditions that exist outside with which the common carrier is not connected, and with which the transportation itself is not connected.

There being a prohibition community toward which a shipment of liquor was directed, that outside situation would not and could not justify the carrier in making a rule or in legislation compelling him to make a rule of a different kind with respect to one class of merchandise than he would as to another.

Mr. CLAYTON. May I not ask you there, do you not think Congress has already by the passage of the Wilson law singled out and put in a class by itself intoxicating liquors; do you not think that the decisions rendered under the Wilson law recognized the right of Congress to single out intoxicating liquors and put them in a distinct class by themselves and to prescribe separate regulations for the transportation of such merchandise?

Mr. THURSTON. No; I do not think it is to such an extent, I think the only extent of the decision of the Supreme Court is that Congress can make an article when it reaches a State subject to the laws of the State, and of course, when that article reaches the State it can make the common carrier from that point on in handling that shipment subject to the laws of that State.

Mr. CLAYTON. Has not Congress singled out and put in a class by itself the transportation of cattle so as to prevent the spread of pneumonia or the tick fever, for example?

Mr. THURSTON. Undoubtedly.

Mr. CLAYTON. It has singled out that article.

Mr. THURSTON. Unquestionably.

Mr. CLAYTON. Now then, is it not competent for Congress to single out and legislate in regard to intoxicating liquors?

Mr. THURSTON. I do not think so as far as the common carrier is concerned. In regard to the cattle, it is done because the cattle transportation—not the ultimate use of the cattle but the transportation itself—is dangerous to the public welfare, the public health, or rather to other cattle.

Now, if there was anything in these liquors that could blow up on the way, or could hurt anybody while they were being transported, or would affect the moral condition of a community while they were on the cars, Congress could make any kind of a regulation it pleased; but here you are trying to make a regulation as to transportation simply because when these liquors arrive at their ultimate destination they may, in the use individuals make of them, become dangerous to the public welfare, and I do not think that would be a ground that would justify that.

Mr. CLAYTON. No; I hardly think you state it fairly. The Hepburn-Dolliver bill, as reported at the last session of Congress, was intended to be a regulation of interstate commerce, and its constitutionality was based upon that and not with reference to any prohibition laws of any particular community. It was intended solely in furtherance of the power of Congress to regulate interstate commerce, and do you not think that Congress has a right to regulate the trans-

portation of intoxicating liquors as a class by themselves and to prescribe the rules under which they may be regulated in the transportation by the carrier?

Mr. THURSTON. In my judgment I do not believe it has. I am pointing this question out to you, not because of the fact that I stand here opposing legislation on that subject, but because, if legislation is to be enacted, my people want legislation that they can stand on; it is for their protection; it is not because we oppose anything. We only want you gentlemen to be very sure, and if you require that we shall make a different regulation with respect to these shipments, to other shipments, that you are putting us on safe constitutional grounds where we can stand; we do not want trouble and litigation following the law.

Mr. CLAYTON. You do not think Congress can require the express company, then, to collect in advance its charges for the shipment of intoxicating liquors from one State to another?

Mr. THURSTON. I doubt it seriously.

Mr. CLAYTON. You do not think that would be a regulation of commerce authorized by the Constitution?

Mr. THURSTON. I think it would be this. You have the basic foundation for your legislation; this is interstate transportation, and you can regulate it so long as your regulations do not discriminate as between shippers. You can not require that the one man shall require more than another for his shipment, and I do not think that there is any basis on which you can say that a box of dry goods, the transportation of which, the manufacturers of which, the sale of which, is legal in New York, can be sent by a carrier C. O. D., and prohibit a box containing liquors, which is at the point of shipment legal in its manufacture, and in its sale, and in its shipment, from being sent the same way.

Mr. HENRY. I think the South Carolina case throws great light on the proposition you made. In that case they declared the law unconstitutional because it discriminated against wines and liquors from other States, and in that case they held that it was a constitutional right that a man had to ship liquors or wines into South Carolina, from California or any other State, for his own use and consumption, but not for sale, and that that right could not be abridged by the State or Congress, and that South Carolina could not discriminate against this article of interstate commerce. I think that strengthens your position very greatly.

Mr. THURSTON. I think some of my people would be entirely willing to-day, perhaps more than willing, to put it in there voluntarily, but they do not believe they can, and they are very much afraid that Congress has no basis on which to enact that legislation.

Mr. HENRY. I do not believe it can myself.

Mr. THURSTON. Thank you, gentlemen, for your attention.

(Thereupon, at 12 o'clock, the committee took a recess until 2 o'clock p. m.)

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., March 20, 1906.

The committee met this day at 11 o'clock a. m., Hon. John J. Jenkins in the chair.

The CHAIRMAN. The committee will come to order. Is there any gentleman present who desires to proceed with the argument this morning? I am very sorry we have had to delay these matters, but we have been waiting until we would have more members of the committee here.

Representative WEBBER. Is this the Littlefield bill this morning, Mr. Chairman?

The CHAIRMAN. It includes everything on the same subject—Mr. Williams' bill, and the Hepburn-Dolliver bill, and the Littlefield bill.

Mr. WEBBER. I would like to be heard a few moments on the Littlefield bill.

The CHAIRMAN. We would be glad to hear you now, Mr. Webber.

**STATEMENT OF HON. AMOS R. WEBBER, A REPRESENTATIVE
FROM OHIO.**

Mr. WEBBER. I do not presume to instruct this committee, made up largely, as it is, of lawyers of experience in the law, as to what the law is, nor do I presume to instruct you relative to the facts. But I do want to offer my influence, what little there may be of it, and my testimony in behalf of the measure.

The world is progressing. It should be, and no doubt is, light that we are after, and not heat. We should all be willing to listen one to the other, in the light of past and present events and surroundings, to see whether or not this legislation would be just under the principle of the greatest good to the greatest number.

Now, if I understand the Littlefield bill correctly, its object is to remove an evil which has grown out of the fact that there is no law against common carriers, carrying on interstate-commerce business, which prevents them from carrying into any State or Territory intoxicating liquors, and the State or Territory that has laws that are against the traffic finds itself crippled continually by these clandestine shipments that are made to private individuals.

Now, I take the position that we have long since passed the question whether liquor is an evil or not, whether the liquor traffic is evil or not. It is conceded by the people as a mass to be an evil, and has been adjudicated by the courts as such. I know out in Ohio I have gone carefully over the decisions several times, and I have found that all the legislation, drastic as it may have appeared on its face at the time, against the sale and the furnishing of intoxicants has been upheld by our Supreme Court, and always on the ground, ever on the ground, that it is an evil, and any legislation that will cripple the evil should be upheld under the constitution of the State.

Now, if this committee think that the shipping of intoxicants into the States and Territories in the manner that it is carried on is an evil to the Commonwealth, and that this provision, this Littlefield bill, will correct that evil, at least within a reasonable measure, why

should it not be enacted into law? Why should any State or Territory be crippled in its efforts to suppress an evil when the Congress of the United States, having control of interstate commerce, has the power to correct it?

If the liquor traffic were not an evil, if it were a legitimate business, if it were for the common weal of the country, I would be against this bill. But I am in favor of this bill, because that traffic is an evil, and this bill seeks to remedy it, and in my humble judgment it would remedy it.

The people in my State, I believe, four-fifths of the voters of Ohio, if they had the opportunity to express themselves on a provision of this character, would say, "Enact this into law," and I take it that Ohio is at least an average State in the Union as regards intelligence. It is getting to be one of the older States. It has in it eastern people, and it has in it those who gave people to the West.

I trust, gentlemen, and I know and believe you will give this measure that consideration that men of heart and judgment and conscience, men who are fearless desire to give to every piece of legislation that comes before this committee.

I thank you for your attention.

The CHAIRMAN. Mr. Boutell, do you desire to occupy any time now? Representative BOUTELL. Yes.

STATEMENT OF HON. HENRY S. BOUTELL, A REPRESENTATIVE FROM ILLINOIS.

Mr. BOUTELL. Mr. Chairman and gentlemen of the committee, I wish, in the first place, to thank the committee for their kindness and courtesy in giving me this opportunity to appear before them. I did not know until two weeks ago yesterday that the bills which you have under consideration were likely to be reported, and therefore, although opposed to these measures, I did not ask for an opportunity to be heard.

I remember one of our colleagues in a former Congress telling me that he carried on his campaign partly by a unique method, at least to me, of sending out our familiar gallery cards to all the registered voters in his district. I suggested to him that he might find that a little embarrassing. "No," he said, "it simply conveyed to them in a tangible form my willingness and pleasure to see them here," although he never expected that any great portion of his 40,000 voters would come here and sit in the gallery.

In the same way we all know, and we can speak very frankly about it among ourselves, that there are a great many measures introduced in the House—something over seventeen thousand have already been introduced in this session—which it is not designed should ever be acted upon. Those who introduced them express through these measures their approval of the objects sought to be attained. And so with these measures here. I did not suppose that any one of them would be considered or reported by this committee.

One of these bills, the bill introduced by Mr. Williams, is a bill that had previously been before the Ways and Means Committee.

Mr. PALMER. I hope you do not mean to infer that Brother Littlefield introduced his bill as a gallery play, do you?

Mr. BOUTELL. I did not refer specifically to his bill. But inasmuch as the gentleman from Pennsylvania asks the question, let me say I have in mind a bill introduced in two Congresses for the repayment of some sixty million dollars of a certain tax levied and collected and expended some forty or fifty years ago. I have no doubt the object to be attained by that measure is a popular object in the district represented by the gentleman who introduced that measure. It has never been reported and never argued, and I presume it never will be.

Mr. LITTLEFIELD. I will relieve the gentleman from any embarrassment, so far as the Littlefield bill is concerned. It was introduced in order that it should be reported, if it can be. I wish to see it enacted into law later, if it can be.

Mr. BOUTELL. I have no desire to speak on the constitutionality or unconstitutionality of any of these measures, and I have in mind House bill 13856, introduced by Mr. Williams, and House bill 3159, known as the "Hepburn bill," and House bill 13655, introduced by Mr. Littlefield, and House bill 16479, introduced by Mr. Brantley.

Now, gentlemen, I will not occupy your time in discussing the constitutionality or unconstitutionality of any one of these measures if they should be enacted into law, for various reasons. I know, in the first place, and I take it for granted, after this lapse of time and at the close of the hearings, that this question has already been discussed exhaustively, and there are no gentlemen in the House and in the country who are better able to pass upon the constitutionality of this bill than the members of this committee; and in the second place there is this further consideration, that when we attack a measure in the way of opposition on the ground of its unconstitutionality those who are advocating the measure by convincing themselves of its constitutionality thereby convince themselves of the wisdom of passing it; and so I will concede, in the little I have to say, for the purposes of argument, that these bills, if enacted into law, would pass the scrutiny of the Supreme Court.

I only wish to say this in passing, as the great Grotius said, that even while justice does not require us to spare the lives of those taken in war, it is often required by goodness and magnanimity and mercy; and so it is in our legislative body, that even where a bill is not unconstitutional, there are considerations of sound policy which should prevent its passage.

Neither will I enter, gentlemen, into any discussion of the liquor question, so called, or of the wisdom or unwisdom of prohibitive, or, as somebody has coined a new word, deprivative, legislation, in preventing intemperance. I would, however, simply say this in passing upon that question—and I do not know that I am justified in delaying even for that—that I have in my hand a copy of the *Staats-Zeitung*, a great morning paper published in Chicago, of March 13, in which the leading editorial is an editorial commendatory of the attitude of Miss Phoebe Cousins, the noble-minded and philanthropic woman, in being taken on a sick bed before the New York legislature to oppose a prohibition measure, so called, pending there, as not being in the direct interest of temperance.

Again, I find in the Chicago Tribune of March 18, under a London date line of March 17, a dispatch concerning the great activity in

London in the consideration of curing the evils of intemperance; and both in Great Britain and, more especially, in Germany and France and Switzerland they are approaching this subject in a much more scientific spirit than we are here. In this London dispatch there is given an account of the methods adopted by certain Episcopal and Wesleyan clergymen in turning the minds of their parishioners from drink, and in the arguments made by distinguished scientists along that same line the declaration is made that in curing the drink habit we must bear in mind the fact that Nature abhors a vacuum, and it is not merely by deprivative legislation that we cure the terrible evils of intemperance, but by substituting something else for it. Here is the dispatch:

[By cable to the Chicago Tribune.]

LONDON, March 17.

Dr. Emil Reich, who just now is giving a series of lectures at Claridge's Hotel on Plato's philosophy, appears to be in agreement in his views on drunkenness and its prevention with the Rev. Stanley Parker, Wesleyan pastor at Plumstead.

Doctor Parker has gone one better than the Rev. Dr. Samuel Thackeray, who has taken over the Fish and Eels Inn at Hoddleston with a view of reforming the drunkard. Doctor Parker has organized a brass band, which he marches through Plumstead in the evenings in an endeavor to induce half drunken people away from public houses to an impromptu sing-song in the townhall, and, what is more, he is succeeding.

Publicans laughed at first, but now are angry, and one night Doctor Parker was treated to a drenching with a bucket of beer, but that did not dampen the ardor of the little pastor. He doesn't try to preach to his audience in their half drunken state when he gets them together. He simply tells them to sing what they like.

VISIONS OF A MERRY NIGHT.

The result may be better imagined than described, but in the morning they have a distant impression of having spent a merry evening, and so they come again, and that is just Emil Reich's theory, too, for the prevention of drunkenness, for here is what he said in a lecture the other evening:

"Can you imagine that the signing of a bit of paper pledge will curb human passion? What do men drink for? Why do they drink so much, especially of the wretched stuff consumed by the ordinary drinker? I'll tell you. It is want of amusement. Between the amount of amusement given to a nation and the quantity of drink consumed by that nation there is a clear, almost fixed relation. France seldom drinks to drunkenness, but has plenty of amusement. When will these temperance and teetotal people learn that their efforts to suppress drink by methods they adopt are futile?"

PRACTICAL FOES OF DRINK.

"The bicycle probably is the greatest foe of the drink traffic. It has accomplished infinitely more than all the talk of the teetotaler and far more sanely and beneficially. Open your theaters on Sunday to people, encourage cycling, the love of the theater, the love of amusement, and the occupation of temperance and teetotal orators is gone. Take away a glass of drink from a man and he'll get another. If he can't get that he will resort to opium."

Then, with a twinkle in his eye, the lecturer created laughter by adding, "Or, what's ten times worse, tea, because the passion is from within, and counteractives of a deprivative order will never do. They always have failed us. Government statistics show beyond cavil that the number of murderers among teetotalers is far greater than among even confirmed drunkards. Some people ascribe all crime to drink. I agree with them if you make that drink water."

Mr. LITTLEFIELD. I suppose, Brother Boutell, that that is in face of the fact that the German army, when it is called upon to show physical endurance, is absolutely deprived of anything that stimulates and intoxicates?

Mr. BOUTELL. Oh, yes.

Mr. PALMER. The point of Brother Boutell's argument is that the temperance people do not know what they are talking about, and that the other side know better what the temperance people want than they do themselves.

Mr. BOUTELL. That is one of those inferences, perhaps, that a man would draw who is looking only at one side of the picture. I said that I did not propose to discuss the question at all. I simply intend to allude to these facts in passing, as they were drawn to my attention this morning. I say, again, I do not propose to discuss or to be drawn into any argument as to the wisdom or unwisdom of prohibitive legislation intended to cure intemperance, and I say to my Brother Palmer that, for the purpose of argument as to the constitutionality of this law, I concede the wisdom of prohibitive or curative legislation in regard to temperance. But I do not propose to discuss it, and in the third place, I do not propose to discuss the effect of any of these bills in reenforcing State legislation. It is the very fact that they reenforce certain State legislation that is the basis of my opposition to them, as I will attempt to show later on.

But I simply wish to make two points, Mr. Chairman and gentlemen. Two weeks ago I received communications from societies in my district asking me to present, if possible, the attitude of the German-Americans toward legislation of this character, and it is a great pleasure to me to do that, in the first place, and secondly, I will give the ground of what I think is their serious opposition to bills of this character. In the first place, I want to relieve my German-American friends of the great amount of satire and ridicule that have often been heaped upon them for what is often denominated their irrational devotion to beer.

It is a subject of comment and ridicule on all occasions, and I want to explain, if I can, what that origin is, and what the basis of their opposition is, as a class, to legislation of the character of these bills now pending here.

First, I want to read a translation of an editorial which appeared in a recent number of the Chicago Staats-Zeitung, as showing the attitude of these people. It is entitled:

GERMAN-AMERICANS LOOK OUT!

While the production and sale of alcoholic beverages is denied in the so-called prohibition States, the individual citizen in these States thus far has not been deprived of the right to buy beer, wine, and ardent spirits in original packages from other States and from abroad. These shippings are protected by the interstate-commerce laws and are not placed under the jurisdiction of State and municipal authorities until the recipient of them is in actual possession.

For years the prohibitionists have endeavored to confine the right of living of those among their fellow-citizens whom they have forced into their yoke to rules of their own choice. At the present time they are attempting to force through Congress the so-called Hepburn-Dolliver bill, the purpose of which is to place under the jurisdiction of the willing authorities of the "dry" States and Territories all shipments of alcoholic beverages sent to addresses of such States or municipalities at the boundary line. True, we are assured that the law is not directed against private persons, but against dealers who import the beverages for the purpose of reselling them. But since the officials have no means of determining from the appearance of the original packages whether the beverages will land in the cellar of a private party or be resold to second and third customers. It is perfectly clear to all who are aware of the usual officiousness of those in charge, that a law like the proposed Hepburn-Dolliver measure will be a source of endless harassing and senseless red tape.

The bill should be killed by a sweeping majority, for it one of the most objectionable and most dangerous measures which have been introduced in the national legislature for years. It is a flat contradiction of the popular idea of constitutionally guaranteed rights and personal liberties to the citizen, it encroaches upon the jurisdiction of the States, and it disfranchises great municipalities which thus far have been successfully battling with prohibitive oppression. Besides all this the measure is a severe blow to the interstate jurisdiction of commerce, which is a prerogative of the Federal Government and should of necessity remain such.

However, the moral objections to the bill are even of more importance than the constitutional and legal considerations. This country suffers from an overproduction of laws; the condition thus brought about would be unbearable only for the fact that the common sense of the people treats with contempt and refuses to observe bad laws. The great German chancellor von Bismarck coined the phrase: "Bad laws are amended by a careless administration." It seems reasonable to extend the application of this expression thus: Bad laws produce a worse administration, destroy the people's sense of justice and rob it of its respect for the authorities.

It is the right and the duty of the Federal Government to interfere in the administration of the States whenever their republican form of government is endangered, when life and property of the citizens are threatened, or when the necessity of defense against a foreign foe arises. But the Federal Government has no right to meddle with the administration of the States for the purpose of subordinating the majority to the whims of the minority, which in this case would mean to set up the Prohibitionists as the ruling power. The Hepburn-Dolliver bill is the first attempt to use the Government as a tool to interfere with the established police forces of the States and municipalities.

It is to be hoped that all German-Americans will arise as a unit and ward off this blow, which is aimed at the foundation of our Constitution and our civil liberty. Prohibition has proved a failure wherever it has been instituted. Nowhere has it promoted the cause of true temperance, but it has always been the hotbed of narrow-mindedness and intolerance. The intended compulsory measure will not change this. No Congressman who votes for the Hepburn-Dolliver bill is therefore entitled to the indorsement of an honest German-American in the future.

Without going back over the paragraphs of that editorial, I want to call attention to those specific sentences which probably have dwelt in your minds, expressive of the feeling that this measure and similar measures infringe upon the personal liberty of the citizen.

Now, we know that the German-American element is very large in the United States at the present day. I think the statistics show that in our population to-day 35 per cent are of foreign parentage. In some of the cities of Massachusetts the percentage of foreign parentage has gone up to over 85 per cent. In Illinois about 51 per cent in the State are of foreign parentage, and in the city of Chicago about 77 per cent are of foreign parentage, and the majority of these are Germans.

I have lived among them all my life, and I know them; and I think I know the origin of their feeling as to legislation of this sort. In my district there are perhaps six large German churches; I know of two churches in which the schools below the eighth grade contain 1,800 children, all taught in the German language, and taught English as a classical language, and therefore they speak English a good deal better than some of our American children. Those are Catholic churches. Then there are large Lutheran churches, all loyal people and God-fearing citizens, but all reflecting the sentiments expressed in this editorial.

Why? The German, perhaps, who wrote that editorial, is Wilhelm Rapp, Herr Wilhelm Rapp, the editor of the concern, who was one of the notable forty-eighters, men who came to this country like Carl

Schurz and Pratorius and Brentano. They undertook to set up great freedom of speech and of religion in the Fatherland, and when they came to this country they seemed to revert to the old original Teutonic ideas of religious and civil government, which they possessed in common with our Puritan ancestors. They brought with them certain very estimable things for which we should thank them. They brought with them a joyousness of life and of out-of-door living, and they brought with them what I am glad to see has gone into almost all our schools—they brought into the church the choral singing and outdoor schools and picnics.

They brought with them their isothermal lines, and they have mingled with those of New York State and Massachusetts and the West and the Northwest particularly, and therefore when they brought with them their wives and children they joined with their wives and children in the songs and festivities to which they had been accustomed. They had their national beverage with them, and at that time no one ever accused the Germans of any especial devotion to beer. The devotion of the Germans to it simply came as a reply to the attempt to deprive them not only of their beer, but of those other things that I have mentioned—their choral singing, their sangerfests, their out-of-door festivities, their picnics.

If some of you are familiar with the local histories of some of those Northwestern States, you will find that where they settled these out-door Sunday picnics were attacked by the Sabbatarians. There was some narrow-minded and stringent local legislation forbidding the assembling of those people in their Sunday out-of-door afternoon picnics with their families, with their music, and their beer. Then there came along a strong response to that movement in the use of the native German language and the establishment of their own Lutheran and church schools. All of this was in consequence of an attack made upon the Germans.

Of course, I do not think it will have any prevailing influence with you gentlemen concerned in the enactment of this bill, but I take great pleasure in relieving the German people, in their almost universal opposition to this measure, of the accusation that they are devoted to alcoholic intoxicating beverages.

It would perhaps be a clumsy illustration to say that the opposition of the German to this deprivation of his beer would be just like the opposition of all of us Yankees if somebody conceived the idea that the codfish was provocative of thirst, and if some State or municipality forbade the sale and use of codfish, and bills were introduced here to deprive the codfish ball of its interstate-commerce privilege. [Laughter.] And I will venture to say that from Aroostook to San Diego, and clear down to Dry Tortugas, those who never ate a fishball in their lives would unite in opposition to that measure. [Laughter.]

Mr. PALMER. Do you draw any line of similarity between a codfish ball and a highball? [Laughter.]

Mr. BOUTELL. I do not know whether there is any distinction to be drawn between those or not; but, coming a little nearer to the New England home, I will take the subject of rum. My good friend, Mr. Littlefield, and my good friend, Mr. Tirrel—

Mr. LITTLEFIELD. Medford rum?

Mr. BOUTELL. Yes; they will know something of the rapture with which our Puritan ancestors regarded rum. [Laughter.] Strange

as it may seem, before the temperance revival of the early part of the nineteenth century—during the eighteenth and the early part of the nineteenth century—the universal New England beverage was rum. The first item that was discussed in the first tariff bill of 1789 was the subject of rum, and the first duty ever imposed by the United States Government was a duty proposed by a distinguished New England Member of the House for protection of the New England beverage of rum. As late as Senator Benton's time, he proposed a heavy duty on molasses, and when asked for an explanation, it was this: It was in protection, he said, of his rapidly degenerating colleagues and constituents in New England, because, from his own observation and scientific researches, he had discovered that a man could be drunk longer and get sober more quickly on corn whisky than on rum, and by the prohibitive duty on molasses he wanted to prevent the importation of rum. [Laughter.]

If any of you are at all curious, and if any of you have an antiquarian spirit, as I have no doubt the New England members of this committee have, and have looked over the old church records, you will find that in the old orthodox churches the largest item of expenditure in the church raisings or in the ordination of a clergyman was the expenditure for rum; so that you will observe there was a time in the history of this country when rum was a New England beverage and New England statesmen were called upon to protect it, and no church function was considered complete without the use of this beverage.

MR. LITTLEFIELD. All of which shows that "the world do move." [Laughter.]

MR. BOUTELL. Yes; "the world do move," and among the best things, seriously speaking, that our Germans did in bringing in their happy out-of-door life and their choral singing was in replacing strong alcoholic spirits with beer.

MR. GILLET. Do you mean to say that in Maine and some others of those New England States they have ceased using alcoholic spirits? [Laughter.]

MR. BOUTELL. I would have to refer that question to those who are more familiar with the facts up there.

MR. LITTLEFIELD. They do not raise churches on rum and depend on rum in the New England churches.

MR. PALMER. They only raise hell on rum. [Laughter.]

MR. BOUTELL. Another thing. We have passed upon all that narrow and nativistic and undemocratic attack upon our German-American friends, and if you will read the records of our social progress with an open mind you will concede that the Germans that came from the Fatherland and introduced choral singing and turners' societies and their beer have done as much as any one element for the cause of temperance; and those who were formerly the critics of the Sunday festivities of the Germans are now themselves breaking the austerities of the Calvinistic Sabbath with the lonely game of golf, and the automobile, and the bicycle; and the influence is good.

So much in explanation of the feeling of the German-American citizens upon this deprivative or prohibitive legislation, and the origin of their opposition to it.

MR. LITTLEFIELD. Your point, as I understand it, Brother Boutell, in a word is, that it is racial and inherent, rather than sinister?

Mr. BOUTELL. Yes; and that beer has never been regarded by the Germans as an intoxicant, and that the manufacture or vending of beer, as almost all of you know from traveling in the old country, is high in the social scale. The point I wish to make is that they rise in opposition to measures of this sort for reasons altogether different from the advocacy of intoxicants, as I have often heard it sincerely said.

Mr. PALMER. The other inference I draw from your discourse is that you think the European Sunday is preferable to the American Sunday?

Mr. BOUTELL. I think a happy modification of the old Sabbath with which you and I were familiar in our boyhood—a happy modification with the outdoor life and song and music which came to us with the Germans and Huguenots—is preferable to the dull, dreary Sabbath of the early Puritans.

However, that is neither here nor there. The reason I think these bills should not receive favorable consideration from you is that, conceding their constitutionality and conceding the wisdom of prohibitive measures, these bills, as I understand it, however differing in detail, have for their object the removal of the interstate-commerce character and privileges from a certain class of commodities under certain conditions, some under one condition and some under others, according to the character of the bill, the object being that where a State prohibits the vending of alcoholic beverages the vendee of one State shall not purchase from the vendor in another State under the interstate commerce as set forth in the Constitution. In other words, these measures are a distinct invoking of Federal legislation for the purpose of carrying out State legislation.

Now, I know that one of the strongest arguments made in favor of these bills—and it is put in a very captivating way—is that these measures simply remove the shackles by which the Federal Government has impeded the action of State legislatures. That sounds very plausible, and it is very attractive, but it is not true. If the so-called shackles had been put upon State legislatures by the Federal legislation there might be some truth in it; but an article which is an article of commerce is, under the Constitution, an article of interstate commerce, and the decisions of the Supreme Court have shown how far the Constitution protects such property as against State legislation, and it is Federal legislation of this sort which is direct and positive in defining the character and privileges of interstate commerce.

Now my objection to this legislation is an objection which goes to all legislation of this character, no matter what the details may be; and I say, repeating again, putting aside the question of temperance and the altruistic social benefits to be derived from it, that this is not the way to do it. Why? Because each State has now vested in it plenary power to accomplish the object that is sought to be accomplished indirectly through these bills, and I object to these bills, as I always do to bills of this class, both in and out of the House, sometimes under very trying and urgent demands from sources that I would like to consider favorably, because these bills increase the present alarming tendency toward the augmentation of power in the Federal Government.

If we stop and think for a minute what are the three great evils at the present time that seem to impede the development of this country,

I think all thoughtful, social, and political philosophers would say at once that they are, first, the inefficiency of our present municipal governments, the deplorable inefficiency of the carrying out of the will of the people in our large cities; secondly, the abnormal and unwholesome influence of aggregated wealth, especially in preventing or deterring legislation; and third, the rapid increase in the power of the Federal Government.

Mr. LITTLEFIELD. Now, Brother Boutell, is not this specific legislation exempt from your criticism, because without referring now to Mr. Williams's bill, but taking the Hepburn-Dolliver bill and the bill introduced by myself, it is a distinct and absolute relinquishment of power by the Federal Government to the State.

Mr. BOUTELL. I thought I covered that in my previous thought. I attempted to do it. That, I say, is a very attractive way of putting it.

Mr. LITTLEFIELD. It is not certainly a reaching out for any further power on the part of the Federal Government, so that it would not be subject to the criticism you now make.

Mr. BOUTELL. It is subject to this criticism, that so far as the positive legislation of Congress is required to carry out the legislation of individual States, it is an assumption of power which our forefathers thought had better be left in the State legislature; and it is quite well for us at this time—because there are a number of other bills of this same nature that I want to allude to, as showing how we are working along these lines—it is quite wise for us to refer to some of the expressions of the founders of our Government. It has been an astounding thing to me that bills of this nature could meet the approval of one who believed in the historical doctrines of the Democratic party, and this bill and bills of a similar character are bills which would startle, if they could return to these earthly scenes, even such strong Federalists as Alexander Hamilton or Fisher Ames or William Richardson Davie, of North Carolina.

Let me read a sentence from Mr. Davie in the North Carolina Convention:

The confidence of the people, acquired by a wise and virtuous conduct, is the only influence the members of the Federal Government can ever have.

I think that would quite astonish a United States Senator at the present time.

As showing this concentration and increase of power in the Federal Government, let me call your attention to some almost forgotten instances. Prior to 1860 the States reserved to themselves the right to direct the conduct of United States Senators, and when some resolutions were discussed in the papers some time ago—resolutions of a State legislature in reference to the resignation of a United States Senator—they were commented upon as something entirely new and strange and peculiar; and yet if we look back over the history of our country we shall find that this method of instructing Senators by State legislatures prior to 1860 was very common, and that men of high character, when so instructed and could not comply with the instruction, would resign.

There were a great many resignations of this character growing out of the troubles with Andrew Jackson, the Executive, in the thirties, and perhaps the most conspicuous example was that of a man who

later became President, John Tyler, who resigned because he could not comply with the instructions of the State legislature.

Now, I think the matter is reversed, and the State legislatures are apt to follow the advice—not to put a stronger term in its place—of a United States Senator. [Laughter.]

Another thing has been almost forgotten. Down as late as the fifties resignations from the United States Senate were very common to accept most any other office in the gift of the people. I have here perhaps fifteen or twenty illustrations of United States Senators who resigned to seek the nomination of governor in their respective States, and one of those—and the gentleman from Mississippi [Mr. Williams] will probably recall it especially as a striking illustration—was the case where both Senators Foote and Jefferson Davis resigned at the same time to make a canvass for the governorship of Mississippi.

And perhaps the most striking illustration of all is the case of Nathaniel P. Tallmadge, of New York, who in 1844 resigned his position as Senator from the Empire State to accept the position of governor of the Territory of Wisconsin. I do not know anything that could more strongly illustrate the strengthening of the power of the Senate, without a single alteration or modification of the law, than to imagine one of the present Senators resigning to take the governorship of New Mexico or Alaska.

Mr. LITTLEFIELD. Perhaps after Mr. Phillips gets through with his articles there may be more or less of them inclined to resign.

Mr. BOUTELL. But not to take the governorship of a Territory.

Mr. LITTLEFIELD. I don't know what they would not take in preference to the job they now hold.

Mr. BOUTELL. I simply cite this in passing as one of the illustrations of the strengthening of the power of the Federal Government. This strengthening has been peculiarly striking in the case of the Executive, and in the case of the Senate, and has resulted in demanding in some fifteen or sixteen States the election of Senators by the people. And, singularly enough, the majority of the States that have by their legislatures or by national conventions indorsed the election of Senators by the people have been the solid Democratic States where the legislatures formerly exercised this power of recall, and where in the old days a Senator would resign if he could even have a chance of running for the office of governor of his State.

Now, along with this strengthening of the power and influence of the Federal Government we see this, that very often where a State law seems to be ineffective an appeal is made to Congress for the purpose of reenforcing the State authorities in carrying out that law. Federalist by birth and instinct as I am, I look upon all this tendency of strengthening the different branches of the Federal Government as one of the most alarming signs of our time, because the strengthening of the Federal Government goes, *pari passu*, hand in hand with a corresponding loss in the vigor and stability of our State governments. I recollect in the subcommittee of the Ways and Means Committee in a hearing on one of these bills, or bills involving a similar principle, a gentleman from one of the Southern prohibition States used this very frank language. He was asked if they did not have prohibition laws in the State, and he replied they did.

The question was: "Well, why are not those laws enforced; why do you come to Congress for this reenforcing legislation?" "Well," he said, "you know the trials take place where the offense is committed; the judge is an elective officer, and the sheriff and almost all the executive officers are elective officers, and the jury are friends and neighbors of the defendant." Now, I think when you come to take that home with you and think it over, you will conclude it is an admission that a State had passed all the laws necessary for carrying out the wish of the people, and that under the system which we are so proud of in all of our States they were unable to secure justice, and therefore had to come to Congress for reenforcing legislation.

Now, I know it will be said that this law deals with a peculiar class of commodities, that it is exclusive; in other words, that it does not establish a precedent. Well, let me call your attention to the fact that the same thing was said about the oleomargarine law, that it would not be used as a precedent, that it was a peculiar case, and I suppose more men, members of our House, have admitted to me that they voted for that bill against all their preconceived notions of right and constitutional legislation than have spoken to me about any other measure. What has been the result? As some of those I see about me know, very soon after the oleomargarine bill was passed, the effect of which you all know, a bill was introduced in the House following right along the same lines, to this effect: Taxing all kinds of native wines, and taxing one kind of wine, by a certain description, I think it was 40 cents a gallon, and taxing other kinds of wine a fraction of a cent a gallon, for the purposes of classification.

It is exactly on all fours with the oleomargarine bill, and therefore would probably have been held constitutional. But what was its object? Its object was to raze to the ground, plow under the earth, every vineyard east of the Rocky Mountains. That would have been the effect of it. We have now pending before the Ways and Means Committee another bill along this same line of invoking unusual Federal powers, and that is a bill for classifying wine, and one class is called pure wine; but it gives seven or eight headings of things that can be mixed with it. None of us would call it pure in any ordinary sense of that term, but it classifies wines, calling one wine pure. What is the antithesis of pure? Impure, of course. But in the bill they are to be called artificial. Another attempt along the same line.

Early in the session we all remember the outburst of criticism against insurance companies and methods in this country, and there is a bill pending to tax the capital stock and other assets of the insurance companies, so that by the use of the Federal internal taxing power the Federal Government may get control of these insurance companies. And so on all sides bills are being introduced, which, conceding their constitutionality, it seems to me are extremely unwise in policy as attempting to reenforce, or in some cases actually to aid without reenforcing, State laws, what the States themselves ought to do, what it was the desire of the founders of our system that they should do.

Now, this bill is said to be exclusively in the interest of preventing the consumption of alcoholic beverages. Let me suggest this idea to

you. Suppose the State of Connecticut should pass, as it might very well pass, considering their interests there, a law that no cigars should be sold in Connecticut that were not wrapped in a Connecticut wrapper. Well, the next step, of course, would be to come before this committee with a bill to remove the interstate commerce character and privileges of cigars, so that an embargo would be put on cigars at the State line of Connecticut. Supposing the State of Alabama or Mississippi should pass a law that no cigars should be sold there except cigars which were packed in boxes made out of cedar, a product of those States, and then should invoke this same sort of a law.

Mr. HENRY. You do not mean to say that those bills would be constitutional under any decision of the Supreme Court, I hope?

Mr. BOUTELL. I beg to remind the gentleman of what I said—that I was not going to pass upon the constitutionality of these measures—and I will not attempt to pass upon the constitutionality of these illustrations I give; but it is quite clear that this legislation would not be the end—

Mr. HENRY. What would you say, while you were making these illustrations, of the pure food bill that is going to come up before Congress?

Mr. BOUTELL. I am glad you reminded me of that. I have brought up here what it seems to me is the true doctrine in reference to this measure, and certainly a doctrine that ought to meet with the unanimous approval of every Democrat. I can not understand how any Democrat could look Thomas Jefferson in the face and advocate any one of these bills. These views are the views of the minority of the committee, protesting against the majority report of the Committee on Interstate and Foreign Commerce on the pure food bill.

Mr. LITTLEFIELD. That is, Mr. Bartlett's views?

Mr. BOUTELL. Signed by Mr. Adamson, of Georgia; Mr. Bartlett, of Georgia, and Mr. Russell, of Texas.

Mr. HENRY. If you will read the substitute that he offers, you will find it is in the identical language of the Hepburn and Dolliver bill.

Mr. BOUTELL. I will read the paragraph I have marked:

The undersigned members of the Committee on Interstate and Foreign Commerce, being unable to agree with the report submitted on Senate bill 88, respectfully submit the following reasons why they can not concur in the report:

The power of government to regulate the sale of food products and drugs, prohibit adulteration of the same, prescribe the manner in which they shall be branded, and fix the size and weight of the packages in which such food products and drugs shall be contained is admittedly an exercise of police power.

We do not understand or believe, from our conception of the powers of Congress contained and specified in the Constitution of the United States, that Congress has the power or authority to enact police laws for the regulation of the manufacture, sale, or for the prevention of the adulteration of food, except so far as such laws may be made to apply to the District of Columbia, the Territories, and those localities over which Congress has, under the Constitution, exclusive jurisdiction.

While we are in hearty accord with all efforts made for the purpose of having laws enacted to prevent the sale of impure or adulterated foods, or to prevent frauds and impositions upon the people by the sale of impure or adulterated food,

You might substitute there alcoholic beverages—

we believe that the legislatures of the several States have full power and authority to enact such laws and to protect the people of the various States from fraud and imposition by the sale of impure or adulterated food and drugs. Nearly all of the States have enacted laws on the subject and are enforcing them.

The power to protect the people of the various States in health, in morals, and general welfare is inherent in the States—was reserved to the States by the Constitution, was not delegated to the Congress of the United States, and remains there to be exercised by the States at the will and pleasure of the legislatures of such States.

I could not put into better form the idea that I have in my mind with reference to all these bills.

Mr. LITTLEFIELD. As I understand it, you take Mr. Bartlett's argument, and the conclusion that follows therefrom?

Mr. BOUTELL. I do not know what his conclusions are in reference to these particular measures; I have not had time to go through them, but his general views on the subject are excellent.

Mr. LITTLEFIELD. The conclusion which follows from his argument is a bill almost identical with the bill pending before the committee.

Mr. HENRY. Here it is.

Mr. BOUTELL. I will have to take the gentleman's statement, which I have no doubt is entirely correct, but I should say that it was an absolute non sequitur.

I have taken already more time than I intended for these two points. Just one further illustration of the bill of my friend Mr. Williams. I must say I have full sympathy with the object to be obtained; but that bill goes farther in a way than any of the others, because it refers not only to States, as I recollect it, but to prohibitive legislation in counties and municipalities; and, as showing that this legislation may not end here, I have right near me at home a community of which you have heard, called Zion City, an incorporated municipality under the laws of the State of Illinois, situated at the northeast corner of Chicago, and presided over by John Alexander Dowie.

Mr. LITTLEFIELD. Elijah the Second.

Mr. BOUTELL. Elijah, as he calls himself. Those people are making an effort for a clean and an upright life. We might not concede that all their views are correct, but I have been through their municipality, I have talked with some of their people, and have been familiar with their community ever since the start. I can not but admire their self-control, their self-sacrifice, their abstemious and rigorous life, and their industry. All those are commendable. Now, among other things, they not only prohibit the sale of alcoholic liquors but they prohibit the sale of tobacco in any form; they prohibit the sale of drugs in any form, and no practicing physician is allowed within the borders. They prohibit the sale of oysters, and they prohibit the sale of pork flesh.

Of course there are in that community a great many people who do not belong to the religious community proper, do not give their adherence to those views, but if the contention of the gentleman from Mississippi in his C. O. D. bill is correct as regards alcoholic beverages being sent into a community that has prohibited their sale, why is it not correct as regards any other commodities that that community may desire to exclude? In other words, as Stanley Jevons would reduce this bill logically to mathematical terms, this bill says that commodity A plus the conditions X, Y, Z, one or all of them, shall be deprived of the privileges and character of interstate commerce. Why not the commodity B plus the conditions X or Y or Z; why not the commodity C?

Certainly nothing in the theory of constitutionality. And so it would be a mere matter of evidence, a mere matter of influence, nothing in principle, to secure the enactment of such legislation as would prevent the sending of packages in the ordinary course of business by express containing medicines into Zion City from Racine or pork meat from Kenosha.

Mr. DEARMOND. Has your attention been drawn to bill 16479, introduced by Mr. Brantley?

Mr. BOUTELL. Yes; I have that here. And so, without wearying you any further, or attempting to go into the technical legal features of this bill, and simply summing up with this statement, conceding prohibitive measures in States or municipalities forward the cause of temperance, and conceding that those measures are constitutional, and admitting, what we must admit, that this measure reenforces State prohibitive laws, I think the overwhelming objections to it are that it does what in every State a plenary power can do by healthy, vigorous exercise of the powers which were originally lodged in it.

And that this legislation is an assumption by positive national legislation of powers which should be left to the States. Every one of these powers taken from the States weakens the health and vigor of the States, which, as one of the great fathers said, must forever be the pillars of the fabric of our Union or else the Union itself will become disintegrated.

I thank you, Mr. Chairman and gentlemen, for your attention.

STATEMENT OF HON. JOHN SHARP WILLIAMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI.

Mr. WILLIAMS. Mr. Chairman, I came around this morning with the idea of being a listener and not a talker. Some things said by the gentleman from Illinois will force me to force myself upon the committee once more.

I think most of you will agree that my friend from Illinois has illustrated the gallery-god story very well. His district contains 70 per cent of people of foreign birth who are very much opposed to this sort of legislation. The reply to all he has had to say upon that subject is that the legislation does not affect the people of his district at all; it does not in the slightest degree interfere with the rights of local self-government.

All that the bill introduced by me—and the other bills, for that matter—propose to do is to reenforce local self-government in the various parts of the country by removing the shackles that Congress has placed by inactivity, by pacivity, and nonaction in the exercise of the authority conferred on Congress by the Constitution of the United States. And in doing that it does not affect his people in the slightest degree.

Now, if my friend from Illinois will excuse me, he is always interesting and always instructive, but I have never known him, to use an adjective coined by an old friend of mine at home, to be quite so "inaproporous" as he has been this morning. He has waived the discussion of the constitutionality of the several bills, and he has given us a dissertation upon Senators and the duty they have to

resign when called upon by the State legislatures, and a great many other things of a most interesting, historical character.

I understood, Mr. Chairman, that Senator Thurston in making an argument before your committee took the position that you could not single out a special article and pass a law concerning it like the law which is proposed in my bill. The answer to that is this: That Congress has already done that, the courts have already pronounced the acts constitutional, and if, as I apprehend, he based his objection on the fourteenth amendment, which guarantees the equal protection of the laws to all citizens, it is only necessary to call your attention to the fact that that is an inhibition upon the States and not upon the Federal Government.

Now, my friend says that I introduced this same bill before the Ways and Means Committee. Of course he does not intend to do me any injustice—

Mr. BOUTELL. I merely referred to this as showing that we had heard these arguments. I did not, of course, mean to do my friend any injustice.

Mr. WILLIAMS. It was not the same bill, and my reason for introducing this bill here was that my friend and other members of the Ways and Means Committee objected that that was the wrong committee, and that I ought not to attempt to bring it as an amendment to that section of the Dingley bill, as it was only really an expression of a legal proposition and only indirectly a revenue measure, if at all, and I myself took that view of it later on and introduced this bill, which was referred by the Speaker, and not by me, to this committee.

Now, Mr. Chairman, among the things that are selected and forbidden to be carried, a lottery ticket, obscene literature, instruments for improper use in preventing child bearing, and besides that the Wilson bill itself singles out this particular commodity. In the Committee on Ways and Means my bill was postponed by the action of my friend, among others, until action should be taken by this committee on the bill introduced here. That bill was a bill providing that with these other things forbidden now to be carried by express companies or otherwise liquor C. O. D. should be included.

I then introduced the bill declaring that wherever a common carrier, an instrumentality of interstate commerce, subject to the regulatory power of Congress, should carry liquor C. O. D., or in any other such manner as that anything was left to be done by the carrier as agent of the seller to complete the sale, thereby making the carrier a party to the sale, that should be a misdemeanor and contravention of the interstate-commerce act and should be punished by a certain penalty prescribed in the bill—nothing in the bill but a regulation of interstate commerce.

Now, Mr. Chairman, it is difficult to follow these arguments along just as they come, but my friend said something about intermeddling with the administration of the States, the administration of affairs in the States. There are two ways of doing that—one is by an active law of Congress and the other is by Congress failing to exercise a power vested in it by the Constitution, and that failure itself furnishing an impediment to the due execution of the laws which everybody admits the State has a right to pass.

The gentleman says that our forefathers followed along that line of not intermeddling with the States. I will undertake to say that our forefathers thought that this very power was left in the State—everybody thought it almost until the Supreme Court gave judgment in the original-package case, and so universal was that thought that the pressure came upon Congress immediately to cure the effects of that decision, which Congress undertook to do in the Wilson bill.

One of the reasons why State prestige and State authority have been weakened so much is because of this very overstraining of the Federal interstate-commerce authority to beat down State laws. My friend talks about the States having plenary power in regard to the cure of these very evils that I desire to see cured by the passage of a bill like the one I have introduced. Surely my friend has not read the case of the express company against the State of Iowa, which I read to this committee and which shows so fully that the State has not the power, that the only source from which the power comes to protect just what is complained of is the Federal Congress itself. The decision could not be more clear if the court had tried to pass upon that very point.

Now, Mr. Chairman, the gentleman then illustrates this by making an argument *reducio ad absurdum*. He goes on to say that Connecticut might pass a law to make it unlawful to sell in Connecticut any cigars not wrapped with Connecticut wrappers. The gentleman from Texas very properly interrogated him then as to whether he thought that law would be constitutional, and my friend from Illinois very conveniently declined to discuss the constitutionality of either his proposed *reductio ad absurdum* or the bills now pending before the committee. I want to be perfectly candid as far as I can be—no man is ever perfectly so where he has a side to contend for, because he is more or less warped by his position—but even if that sort of law were constitutional, and it would not be, because this inhibition is upon the States, I want to confess this:

Thomas Jefferson confessed it long before me, and it is true. That the most dangerous power vested in the Federal Government, so far as the reserved rights of the States are concerned, is the interstate and foreign commerce power of the Constitution. It is almost plenary. It was held so fully plenary in regard to foreign commerce that even the father of democracy himself put an embargo upon all foreign commerce and came very near raising a cessation among our New England friends. The very clause which gives the right to regulate foreign commerce gives the right to regulate interstate commerce. How far that power may go heaven only knows, until the judges get through construing it and Congress gets through passing laws.

It is the most dangerous power in the Constitution and as far as I can see there is but one check upon it, and that is the common sense of the national legislators. Great Britain has managed to live in a state of comparative liberty for I don't know how many centuries, trusting to nothing but the common sense of her national legislators. Many of our States have nothing to shackle the State legislators—Connecticut, for example—except the common sense and patriotism of the legislators themselves. Whenever somebody comes before Congress warning us to pass a law to help the growers of cigar wrappers in Connecticut by prohibiting the sale of cigars in Con-

necticut unless they are wrapped with Connecticut wrappers, or to help the Zion Church keep out medicine from the district where the Zion Church rules, I imagine the bill will not have much standing before any Congress now in existence or that ever will be in existence, because there will be no moral behind it, there will be no real evil, there will be a palpable abuse of State authority even if the constitutionality of such measures were granted—and no lawyer would contend for a moment that they would be constitutional.

But when you appeal to Congress upon a matter of this sort we have to attempt to show that the real evil did exist, that the remedy could not be exercised by the State, that the remedy could be exercised only by the Congress of the United States, and that it was a remedy which ought to be exercised, as well as a remedy which Congress had the power to exercise, and it seems to me that that is all there is in it. Mr. Chairman, I thank you.

Mr. PALMER. Senator Thurston made an objection to your bill, that it would not be right to penalize an express company for carrying packages that they would not have any right to examine or know anything about the contents of before they took.

Mr. WILLIAMS. I do not conceive that there is anything in my bill that could punish an express company that carried whisky without knowing it was whisky, and if there is the committee can amend that. Undoubtedly nobody would punish anybody for doing something they did not know they were doing.

Mr. LITTLEFIELD. Has your bill got the element of knowledge in it?

Mr. HENRY. It does not use the word "knowingly," does it?

Mr. WILLIAMS. It says, "shall carry liquor." If a man were to ship whisky in some way so that the express company could not know what it was it would be absolutely unjust to punish the express company for doing that, of course, and I should not object to any amendment to make that plain, if you do not think that is plain as the bill now reads.

Mr. PALMER. The fact is it is always shipped so that nobody can tell what it is.

Mr. WILLIAMS. No; I beg your pardon. It is shipped in a jug marked with the liquor dealer's name on it, and so that the express company can know what it is. Besides that, however, an express company generally inquires what is in a package offered for delivery. and if it is deceived by lies then the company could not be held. As a matter of fact the express company does take the trouble to inquire as to what the goods are that it receives for shipment, and knows it is shipping whisky when whisky is given to it for shipment. I do not want any bill brought out of here that will punish as a crime anything done in ignorance, of course.

Mr. TIRRELL. Would it not be easier to require a label upon a package stating it was liquor?

Mr. WILLIAMS. Yes, that might be. As a matter of fact, that cut no figure in the abuse I am aiming at, because the express company does know. You can put in the word knowingly if you want to, but they know what they are carrying; they are carrying it with full knowledge of what they are doing, so much so that one of the great express companies that operates throughout the South has refused, as they say, to participate in a nefarious traffic.

Mr. LITTLEFIELD. In any event, you are willing that the word "knowledge" should be inserted?

Mr. WILLIAMS. Yes.

Mr. SMITH, of Kentucky. You are willing for "knowingly" to be inserted?

Mr. WILLIAMS. Yes; anything you choose along that line. I do not want to punish a man or a corporation either that has not offended.

(Thereupon, at 12.30, the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

TUESDAY, *March 20, 1906.*

The committee met pursuant to the taking of recess.

STATEMENT OF HON. ASLE J. GRONNA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH DAKOTA.

Mr. GRONNA. Mr. Chairman and gentlemen, I simply want to say a few words in regard to the Littlefield bill, in which we are very much interested in the State of North Dakota. We have, as perhaps you all know, constitutional prohibition in our State. We have no trouble in enforcing the laws so far as our State laws are concerned, but our great trouble is with what we call C. O. D. packages. We find that these eastern people, or the liquor people, ship in a great deal of stuff to the station agents. They ship it by numbers; they do not ship it in to any particular persons, but simply ship it in and mark it by numbers.

They seem to have an arrangement with the station agent, and the latter generally has a certain room for this liquor in his station. Arrests have been made; we have had several cases before the courts; but, of course, you know how helpless we are, because we run up against the interstate commerce clause. Our people are very much interested in this subject. We have had State prohibition now for several years, and the sentiment is growing in our State; we are more and more in favor of it, and if we could only have a law such as the Littlefield bill I think we would be able to do away with the sale of intoxicating liquors in our State entirely.

Mr. BRANTLEY. Do you think that liquor shipped in from other States to any particular person not a bona-fide shipment, but sold actually after it arrives to some person to whom it was not shipped, is protected by the interstate commerce clause of the Constitution?

Mr. GRONNA. I do not know that it is protected, Mr. Brantley, but we can not prove that it is not shipped to some particular person. For instance, I go into the depot and I see the agent, and I will say "Is there a package for me?" And he will say "Your number is 365, is it not?" "Yes; that is my number." Now, it is impossible for me to prove that that liquor is not shipped to me personally.

Mr. BRANTLEY. Did you ever make a test case of it?

Mr. GRONNA. Yes.

Mr. BRANTLEY. And failed to convict for the want of proof?

Mr. GRONNA. Yes; it has always failed. We have made several tests. Of course, I am not here to argue the moral side of it, because

there are others that can do that better than I can; I am simply here to tell you from a business standpoint that I believe prohibition is one of the greatest blessings a State can have. I believe if I had Rockefeller's money I would start in to try to eradicate the American saloon, and that I would do more good with my money in that way than I could do in any other way. The Red River of the North divides the State of Minnesota from North Dakota. There is the town of Grand Forks on one side of the river and East Grand Forks on the other side.

East Grand Forks has 30 or 40 saloons, and they pay \$1,000 apiece a year. That city is bonded to the limit; they have no paved streets; the city does not look prosperous. But you go right across the river to our prohibition State, and in Grand Forks you will find our merchants are prosperous, and we have paved streets, and everything looks nice and clean, and our bonds are at a premium. That same thing is true of Moorhead and Fargo, two towns across the river from each other—one in Minnesota and the other in North Dakota. So it is certainly not in the interest of revenue to have licensed saloons. As a rule you find that the farmers who live around the cities—nearest to the cities—have their farms mortgaged, and that the farmers a little way off from the towns haven't any mortgages on their farms.

In the State of North Dakota you will find all the farmers prosperous. There are no mortgage sales for the reason that they stay at home; they stay at home and attend to their farms and their business. Another thing, our young boys are not confronted with the open saloon. Instead of going to the saloon and billiard hall on Sunday they go to church and Sunday school. But as I said, I am not here to urge the moral side of it, because there are parties here better able to do that than I am; but we are deeply interested in the measure, and I speak for from 40,000 to 50,000 voters in my State; and I know I voice their sentiments when I say that if the Littlefield bill is passed we will get the relief we want.

Voicing the sentiment of 50,000 voters and 300,000 people in our State, I ask that you will pass some such bill as this for our relief.

I thank you very much, gentlemen, for the attention you have given me.

STATEMENT OF HON. WILLIAM H. STAFFORD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN.

Mr. STAFFORD. Mr. Chairman and gentlemen of the committee, I never heard until within the last minute that drinking was the cause of poorly paved streets or of the foreclosure of farm mortgages. I had to wait to be enlightened by the distinguished Representative from North Dakota; and while I am not so well acquainted with conditions in North Dakota as I am in my own State, still I must say that on passing through his State two years ago I saw many men, as a result of the State prohibitory law, carrying with them flasks of whisky, obtained from so-called blind tigers, and becoming drunk, which conditions do not prevail so generally where liquor selling is not attempted to be suppressed but is regulated stringently under the license system. A necessary sequence to attempted prohibition is

the sale of heavy spirituous liquors, and usually the very worst, under no regulations, and the exclusion of the much milder and temperate drinks, such as beer, porter, and the like.

No one has shown that the Wilson Act is not sufficient to enable the States to enforce their own police regulations. To the query put by Mr. Brantley to Mr. Gronna, whether they had any difficulty in enforcing their State laws, the answer was made that they had had difficulty owing to the absence or lack of proof. I contend that in any community where there is sufficient public sentiment to enforce prohibition laws they can be enforced, but without the requisite public opinion those laws are evaded and are difficult of enforcement. I have listened quite intently to some of the arguments that have been made during these hearings, but I have yet to find any person showing that the States are without authority to regulate the sale of liquor when sent into the States in original packages.

I contend that the State has authority under the Wilson Act to forbid any express agent from transferring original packages by means of C. O. D. delivery to any person other than the recognized consignee, and if a State would enact a law making it a misdemeanor for any agent of any railroad or express company to transfer liquor shipped into a State from another State to any other person than the original consignee, I hold that such a law would be upheld. There can be no question of the adequateness of the authority in the States under the Wilson Act to prevent the practices complained of, provided public opinion is strong enough, as is requisite for the enforcement of all penal statutes, to make it effectual.

It would be futile for me to attempt to add anything as to the views entertained by the German-Americans toward this class of restrictive legislation to that so well expressed by Mr. Boutell here this morning. I know the attitude of the Germans toward these measures, and I know that they regard them as an invasion of their personal rights. My purpose here this afternoon is, if the committee will bear with me, to make some suggestions on the constitutionality of these measures. It may be considered apocryphal, or somewhat presumptuous, for me to make the argument that some of the measures under consideration, if not all of them, are in violation of the Constitution.

The gentleman from Maine the other day stated that there could have been no question as to the intent of Congress, when it passed the Wilson Act, as to the meaning of the word "arrival." Although at first blush, when I first considered that enactment some years ago, I was more or less inclined to believe that the Congress intended to vest in the States the complete jurisdiction over liquor shipments as soon as they crossed the border, still, in reading closely the decisions in constructions of that act, I am inclined to believe to-day, if not fully confirmed in the belief, that the construction of the word "arrival" given by the Supreme Court was proper and necessary to sustain the constitutionality of that act. In considering the cases that have construed that enactment, namely, *Rhodes v. Iowa* (170 U. S., 415); *In re Rahrer* (140 U. S., 545); *American Express Company v. Iowa* (196 U. S., 142), and *Pabst Brewing Company v. Crenshaw* (198 U. S., 17), I come to the conclusion that the Supreme

Court considered Congress without authority to vest its exclusive legislative powers in the States.

You can not delegate, as I take it, authority that is now vested completely and absolutely in the Congress in the State legislatures, as is sought in such enactments as the so-called Hepburn-Dolliver bill and the Littlefield bill.

There was only one purpose involved and only one object to be attained when the Wilson act was passed, and that was to prevent the sale of liquor in original packages, which arose as the result of the decision in the case of *Leisy v. Hardin*. In the cases I have just mentioned and those of *Bowman v. Chicago and Northwestern Railroad Company* (125 U. S., 465), *Leisy v. Hardin* (135 U. S., 100), and *Vance v. Vandercook* (170 U. S., 438), will be found the law that bears upon the construction of the Wilson act, and the scope of the powers of Congress to enact such legislation.

I think that this committee, viewing this subject from the broad standpoint that it deserves, instead of attempting to extend the powers of the Wilson Act, should, in view of the conditions that were presented in the recent case of the *Pabst Brewing Company v. Crenshaw*, referred to before, seek to limit the Wilson Act so as to prevent an abuse that was never intended by the framers of the Constitution to be perpetrated by the States so far as interstate commerce was concerned. No wonder that the justices that joined in the minority opinion—Justice Brown, Justice Brewer, Chief Justice Fuller, and Justice Day—entered such a vigorous protest against the act of Missouri in that case under construction, where that State attempted, by reason of their authority under inspection laws, to levy a tax on an article of interstate commerce which was considered in that enactment to be an article of commerce.

Mr. PARKER. Where is that reported?

Mr. STAFFORD. It is reported in 198 U. S., page 17. In that case, as perhaps you already may know, the State of Missouri levied a tax under the guise of its inspection laws upon all beer that was produced in the State and all beer that would be imported into it. As far as it related to the beer produced in the State there could be no question but what it was a valid enactment, and that its object was for the purpose of inspection, but as the minority opinion pointed out clearly, as far as the covered inspection of imported beer was concerned in requiring an affidavit to be furnished by the manufacturer of beer made outside the State, it was merely a subterfuge in order to tax the outside product to the advantage of the local product.

I do not believe that the framers of the Constitution intended that an article of interstate commerce, in being transported from one State to the other, should be subjected to the discrimination that the beer in that case was subjected to—to the disadvantage of the outside producers and to the advantage of the local producer. Without the Wilson Act, which was construed as vesting the right to pass such inspection laws as to intoxicating liquors upon their arrival in the State, this State legislation would not have been upheld by the majority justices in that case.

It was suggested this morning by Mr. Boutell that if this legislation is enacted it would authorize the State of Connecticut to give a preferential advantage to the cigars that were made with Connecticut wrappers.

Mr. Boutell did not see fit to take up that argument, and I do not attempt now to answer that which he declined to answer, but as it was in the line of the argument I intended to present to this committee, I wish to say that if Congress would extend the designated articles in the Wilson Act to include cigars, the use of which the States under their police powers as relating to the public health can regulate, and then the State of Connecticut would enact a measure similar to that which the State of Missouri enacted in the case which was passed upon—the case of the Pabst Brewing Company *v.* Crenshaw—that it would give the manufacturer of cigars in Connecticut a decided advantage over the manufacturers without the State. It must be admitted that it was never intended to hamper the passage of the commodities which were recognized as articles of commerce in their transportation from State to State, and in the Missouri statute, construed in the case of Pabst Brewing Company *v.* Crenshaw, beer was considered an article of commerce, and not contraband.

Under the phraseology of the bills that are now before this committee, if they are passed and upheld as being constitutional, under the construction given to the law passed by the State of Missouri in the exercise of its police regulations, any State would have the right to give a preferential advantage to the products of its own State so far as the articles designated in this bill are concerned. One of them I may mention is alcohol. A State could readily, under the guise of the act being an inspection law, so far as alcohol was concerned, whether it would be used as a beverage or whether it would be used in the arts, give an advantage to the producers of alcohol in any State, to the disadvantage of the producers of alcohol in any adjoining State; and that is one potent reason why I ask and believe that this committee should go slowly in conferring such a broad authority upon the State in the regulation of these matters.

It seems that the only complaint that is made that is sought to be corrected is in this abuse that is being followed, whereby certain express-company agents, under the cover of C. O. D. packages, sell the article rather than consign it to a specially designated consignee. I wish to say that if any State would enact a law which would provide that whenever any liquor, on its arrival in a State, is delivered by an agent or employee of a railroad or express company to any other person than the consignee named and specified in the shipment that he shall be deemed guilty of a misdemeanor, that that law would be constitutional within the Wilson act, and that all that would devolve upon the prosecuting officer to enforce such a law would be to obtain the necessary proof. If the States to-day have ample power under the Wilson Act to enact this legislation, to forbid this practice, why should Congress go to the extent of conferring the power that is attempted by these measures to the States in the regulation of interstate commerce, which was never intended by the framers of the Constitution, and which is of such doubtful constitutionality?

Take the Hepburn-Dolliver bill or the Littlefield bill. What is intended by those measures? Congress delegates that power, which is comprehensive and complete in the Congress, to the States to pass such legislation as the State legislature enacts over interstate com-

merce so far as alcoholic liquors are concerned. If Congress can delegate its authority over one subject it can delegate its authority over any number of subjects. But as I understand the Constitution and understand these cases that have construed the law, the opinion has been expressed vigorously that the delegation of power by Congress to the States is unconstitutional, and that the authority over interstate and foreign commerce is exclusive in Congress for its own exercise.

Taking up the report that was submitted on the bill that was favorably reported by this committee last year, we find that Mr. Clayton, who prepared the report, did not seek or attempt—and I suppose all who agreed with him in the report did not seek or attempt—to prevent an individual in a State having prohibition laws who desired liquor for his own use from ordering it without the State and having it delivered to him, but if these measures are passed that I have referred to and if they are held to be constitutional it will vest in the States absolute power to forbid any individual from ordering for his own consumption any of these articles from without the States, and thereby infringing upon that which a large number of citizens believe to be their personal right and privilege.

Mr. PALMER. Would you be satisfied with the bill with an amendment on it as it was reported last year?

Mr. STAFFORD. I believe, in view of the decision in *Pabst Brewing Company v. Crenshaw*, and viewing this question from the broad standpoint of national expediency, that such legislation should be checked at the present time, and that the authority under this Wilson Act should be limited rather than broadened. From my viewpoint I could not approve of that bill with such an amendment, because it would give the manufacturers in one State an advantage over those in another State, and such legislation tends to check the freedom of commerce between States.

What the decisions of our Supreme Court hold, after considering the conflicting opinions and trying to abstract some rule that harmonizes all, I contend, is that Congress has the power to define when the interstate feature of commerce transported between States comes to an end, and to authorize the legislatures to assume jurisdiction over such commerce after said determined time, but Congress is without authority to arbitrarily and without regard to fact terminate the interstate feature before the transit in fact is completed, and that it can not delegate any authority to legislate over such commerce, either through the exercise of the State's police powers or its powers of taxation, before the termination of the interstate transit. To hold the contrary, as designed by these measures that seek to vest control in the States over interstate commerce as soon as the commodities cross the border, would be a delegation of legislative power, which, in effect, would amount to an amendment to the Constitution.

With these observations I leave the matter, hoping that the committee will consider the effect of the latest decision by the Supreme Court in *Pabst Brewing Company v. Crenshaw* (198 U. S., 17), and the extent to which like enactments can be carried to the great detriment of exporters into States where the commodities are recognized as articles of commerce.

STATEMENT OF HON. ANDREW J. BARCHFELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA.

Mr. BARCHFELD. Mr. Chairman and gentlemen of the committee, I desire to speak in opposition to the Hepburn-Dolliver bill as a Representative in Congress and on behalf of the National German-American Alliance of the United States, the Germans and the descendants of Germans in the United States, who number 12,000,000 souls. The Germans are a liberty-loving, independent, economical, patriotic people, and above all things abhor anything that savors of hypocrisy or deceit. The Germans favor the use of beer and wine as a beverage and food, abhor the use of strong drinks, particularly whisky.

The use of beer as a beverage and food is advocated by leading physicians in all large cities where they have not a perfect filtration system and where the mortality from typhoid fever and kindred diseases is alarming. In my own city of Pittsburgh, our mortality from typhoid fever is one-half that of the Greater New York with twelve times the population, and equal to that of Chicago with six times the population. One gentleman appearing before your honored committee two weeks ago said there should be a law enacted requiring all prohibitionists to drink water for a period of five years. He thought that that might be a cure for some of this prohibition legislation. I do know that if they were compelled to drink the water supplied by the city of my birth that it would successfully end all prohibition agitation and all prohibitionists, as they would surely die, as thousands upon thousands of other innocent people have been compelled to pay the penalty for drinking this impure water.

I would say the matter, however, has aroused a proper public sentiment, and Pittsburgh is now engaged in constructing a \$7,000,000 filtration plant. When a man drinks beer he is at least getting boiled and filtered water, something the average wage-earner can not afford to buy at the present high rate of living. This bill is clearly unconstitutional, as it interferes with the interstate-commerce clause of the Constitution. I am satisfied that it would complicate our Government in its application of international law and usages. It is absolutely un-American, as the average American believes in fair play, and this measure is advocated and championed by a few honest but misguided individuals who insist upon the powerful aid of the Federal Government being brought into play to assist them in doing what they themselves have been unable to do (in their prohibition States), namely, make prohibition prohibit.

I will submit this proposition to this committee of men learned in the law, if they can conceive or ever heard of such legislation being offered in the halls of legislation of any republic on earth—surely, not in any monarchy—and has no place here. If a bill such as this were offered in the French Chamber of Deputies, the German Reichstag, or the British House of Parliament it would promptly and speedily be consigned to the waste basket, where it belongs and where it should be. We pride ourselves on the fact that we are a liberty-loving people, but this piece of legislation is anything but the embodiment of that sentiment. The trouble with our country and its free institutions is that we have too much legislation now that is affecting the personal liberty

of the people now living in this supposed free land of ours. Do you want to further restrain us? This bill, if passed, is but the stepping stone to other and more dangerous legislation affecting the personal liberties of our people.

In this enlightened twentieth century, when every man should call his fellow-man brother, be he black or white, Jew or Gentile, Greek or Mohammedan, Christian or infidel, native born or naturalized; when religious, racial, or national differences should no longer exist; when every man should respect the rights of his fellow-man so long as he does not interfere with the rights or liberty of others, legislation such as this has no place in the statutes of the most progressive nation under the sun, which offers an asylum to the oppressed and down-trodden of all other nations who mean well, who think well of our form of government, and who come to our shores for the purpose of establishing a home here and taking up citizenship in the most favored nation on earth. But if we were to tell them that this boasted liberty of ours consists in denying to them the right to purchase and to obtain for his own use a bottle of beer or a bottle of wine, you deny to him something he never dreamed of in his fatherland, and can not bring himself to think that our boasted liberty is anything more than a mere sham.

We are living in a most prosperous and progressive age, when new ideas, new thoughts, and new sentiments are hourly being championed, all to make the world better and brighter than we have existed. But this seventeenth century intolerance has no resting place at the dawn of the most progressive century in the world's history. Thousands upon thousands of people are employed in the hundreds of avenues of agriculture, mining, manufacturing, shipping, and commercial life in the manufacture of these beverages, who are part and parcel of the body politic, who would be ruthlessly thrust aside if these few misguided but honest advocates of prohibition were to have unlimited sway in this beautiful and prosperous land of ours. The millions upon millions invested, the countless millions that this traffic pays into the Federal Treasury, making it possible for us to maintain the most progressive Government under the sun, would be unceremoniously and ignominiously ruined if these misguided people could have their way.

Prohibition never invested a dollar save in temperance societies, where they congregate and raise revenue to keep a propaganda at work, annoying our President, members of his cabinet, Members of Congress, and Senators, threatening them unless they stand by their rabid, nonsensical, and un-American legislation, that they will have dire vengeance meted out to them by turning their whole batteries of temperance union workers against them. Dozens of members of Congress have told me, much as they are opposed to this measure, if the bill comes up on the floor of the House they will be constrained to vote for it for fear of the wrath of the very element I have just mentioned. This is unfair, un-American, and cowardly. Our Government recognizes the traffic, encourages its manufacture and sale, and why should these interests which contribute so much to our national greatness and so much to our national revenues, not forgetting the happiness that is brought to the thousands of homes by the moderate and temperate use of these beverages, constantly be

harassed by a propaganda who never contributed one dollar to the support of the Federal Treasury, and never furnished employment to a single producer of wealth in our nation?

Herbert Casson, in *Munsey's Magazine*, on the Germans in America, says the United States has given to its 12,000,000 Germans the right to shape the course of their own lives, to speak their minds, and own their homes in peace. In return the Germans have become an inseparable part of this country, adding more than any ten can tell to its strength and prosperity. In fact, what Charles Sumner said forty years ago is doubly true to-day:

"We can not forget the fatherland," he said, "which, out of its abundance, has given to our Republic so many good heads, so many strong arms, with so much of virtue and intelligence, rejoicing in freedom and calling no man master."

We have in my city the oldest and largest German church congregation, with a total abstainer as its pastor, an example of tolerance and true personal liberty which the other side may well emulate, and which speaks louder than words that all we ask is to be permitted to live our lives and pursue happiness in whatever manner we individually please so long as we do not trample the same right inherent in our fellow-man.

Mr. Chairman and gentlemen of the committee, I thank you personally for this most respectful hearing, and I ask you to vote down this bill.

STATEMENT OF HON. WILLIAM A. CALDERHEAD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS.

MR. CALDERHEAD. Mr. Chairman, it is a good while since I have listened to anything of the kind we have just heard. I have heard it before, but not for a good while. It is a curiosity to me to know that I had typhoid fever once because I didn't have beer to drink; and there are a good many things I might say concerning that remarkable address; but I think I hardly have time for that.

The fact is I did not know the Hepburn-Dolliver bill or any other bill except the Littlefield bill was under consideration just now. I supposed it was a measure which was intended to take away from the liquor traffic by express companies the protection of the interstate-commerce clause.

We have had prohibition in Kansas for a good many years and I had something to do with it myself. I was not a prohibitionist personally, but I was a prosecuting officer long enough to know the operation of the law and long enough to enforce it in a community where there were as many Germans as there were of any other nationality. We finally came to the place where the only man who could sell liquors in my community was the express agent. He received packages by express from Missouri or from some other State, and then when the men to whom they were consigned did not call for them he would sell them to anybody else who was willing to pay the freight and the charges accompanying the bill, and I convicted him of selling liquor in violation of law and sent him to jail for it. There were some counts upon which he was convicted at the time of which he was finally acquitted, for the reason that he had delivered the goods to actual consignees

and he was protected by this interstate-commerce clause to the extent of those goods only.

Just a word concerning prohibition in Kansas. There are forty-five counties in Kansas that have no inmate of a poorhouse and no inmate of a jail. There are some counties in Kansas where the prohibitory law is violated. Popular sentiment is largely against the law. The class of men who congregate around large machine shops and smelting mills and who congregate in cities from 10,000 to 40,000 inhabitants find ways at one time or another to violate the law.

In any city where there are enough of votes to make it a serious matter for the candidate for sheriff and constable there is more or less violation of the law, but as a rule the law is obeyed in a majority of the counties in the State. As a rule in the majority of the counties in the State the law is enforced. I think there are not more than 15 counties in the State out of 105 counties altogether where the law is not regularly enforced, and the only violation of the law that is safe is this violation which seems to be prevented by this Littlefield bill.

The CHAIRMAN. Would the passage of what you call the "Littlefield bill" prohibit the sale of liquor in your State, such as you have spoken of?

Mr. CALDERHEAD. I am not sure of it, for I only had my attention called to this a few minutes ago.

The CHAIRMAN. Would the passage of that bill or any other bill that is pending, Brother Calderhead, overcome the strong sentiment you say exists in these communities in favor of selling liquor?

Mr. CALDERHEAD. Well, I am not sure that it would do that, and it is not a question exactly of whether it ought to do that. The question of public sentiment in the community depends on the moral standards of the community and of those who undertake the care of the morals and the culture of the community, the preachers and the public school teachers, and the family circles, and so forth. Where more families teach their children that the law is unconstitutional and an infringement of liberty and of personal rights than there are other families, the probability is that the law will be violated there; but if this bill passes, evidently the violator will not be able to shield himself under the protection of the United States interstate-commerce clause in selling goods promiscuously from the express office. I do not believe that any express company ought to be permitted to carry goods into Kansas and deliver them to an agent by numbers, and allow the express agent to let any man have them who will come and sign that number and pay the cost.

Mr. DE ARMOND. Do you suppose that is legal in your State now, or in any State where they have a prohibition law?

Mr. CALDERHEAD. I do not think it is myself, and I would undertake to convict any man myself, but there are a good many good lawyers there who do not think it is possible to convict at present.

Mr. DE ARMOND. I do not believe that they have any proper defense at all.

Mr. PARKER. I visited Fort Riley and Fort Leavenworth not so very long ago. I had been told that Leavenworth and Junction City were wide-open towns. I wanted to know whether it was correct. I was told that their way of doing was to leave to the tax assessor the right to see that prosecutions were brought against the fellows that broke the law that he chose to select, and he fixed the penalty that each was

to pay, and those prosecutions were not public; their names were never given out; that they were allowed to pay in this amount of money simply as a sort of tax, and the whole thing was therefore left to the tax assessor and the justice, possibly, before whom he brought these suits and got the plea of guilty.

Mr. CALDERHEAD. No; the tax assessor in the State has nothing to do with it, but this condition exists at Junction City and at Leavenworth. Understand that these two places are old important military posts that usually have from 1,200 to 2,500 soldiers at each of the posts. In Leavenworth the opposition to the prohibition law has always been strong on the part of the entire population. Leavenworth is on the Missouri River, and the State of Missouri is just across the river. The people who were in favor of the law and its enforcement were very much in the minority; they were never numerous enough to elect officers in behalf of enforcing the law, either marshals or constables, or justices of the peace, or judges of the district courts, or city councilmen.

The city of Leavenworth is governed by a city council, and Junction City is governed in the same way. In order that they may permit the sale of liquor and derive some revenue from it, the city agrees that once every month certain saloon keepers who are named by the city marshal and the city council may come in and pay a fine into the police court of, say, \$100 or \$200. I think it is \$200 at Leavenworth and \$100 at Junction City. They have to pay the costs of the prosecution and \$25 to the district attorney, and fees to the city marshal and the fees to the police judge. They pay those, and pay \$100 or \$200 a month.

The CHAIRMAN. And that is done in opposition to a constitutional provision.

Mr. CALDERHEAD. Yes, sir.

Mr. PARKER. Is it true that their names do not go on the records?

Mr. CALDERHEAD. No, their names do not go on record in Leavenworth. Their names do go on record in Junction City, in this way, that the police judge makes a record of the names. It is the State of Kansas against whoever the man is, charged with violating the prohibition law, and he pleads guilty.

Mr. PARKER. How do they keep their names off in Leavenworth?

Mr. CALDERHEAD. I don't know.

Mr. PARKER. I was told it was entirely in the hands of some officer; whether it was the marshal or tax assessor I don't know.

Mr. CALDERHEAD. The city marshal and the police judge keep the record of the fines.

Mr. LITTLEFIELD. That scheme would simply be compounding felony, and all engaged in that would be liable to prosecution and conviction. The only remedy for that sort of thing is to educate public sentiment to elect better men to office.

Mr. SMITH, of Kentucky. Why could they not be brought before the grand jury? Do you have a grand jury?

Mr. CALDERHEAD. No; no grand jury has been called in Leavenworth County in my time, and I have lived in the State thirty-five years. Understand clearly now, that Leavenworth violates the law. Her population, probably two-thirds of it, is in favor of violating the law, and they elect district judges, and police judges, and city marshals, and city councilmen with that end in view, and with the idea that the law will be violated, and no man can be elected to any civil

office in Leavenworth who proposes to enforce the prohibitory law; and if anybody else undertakes it he fights against the public sentiment of a large part of the community, and usually it is disastrous.

Mr. SMITH. How a large a town is it?

Mr. CALDERHEAD. Leavenworth has about 17,000.

Mr. PARKER. Would the evil be met if the bill simply provided that C. O. D. deliveries should be subject to State law?

Mr. CALDERHEAD. I would have to think a little about that. I think this bill of Mr. Littlefield's comes pretty nearly covering it.

Mr. PARKER. It covers a great deal more. It covers cases where liquors are brought in and stored and then exported, and I don't know whether that was intended, because in such case the liquors are not going to be used in the States.

Mr. CALDERHEAD. I wanted to call your attention to another thing. Don't forget this fact now. There is Leavenworth and Kansas City, Kans., and Guyandotte and Junction City, at which there is Fort Riley, and there is Wichita, all those places where the law has never been observed or obeyed, practically; there are altogether about 15 such places as that in 105 counties in Kansas.

Mr. DE ARMOND. Fort Scott and Pittsburg and Galena?

Mr. CALDERHEAD. Yes.

Mr. PARKER. I got away from that—

Mr. CALDERHEAD. Don't get away from the fact that there are 8,000 miles of railway in Kansas with a station every 8 or 10 miles at which liquors can be delivered by the express companies, and if the man to whom they are consigned does not call for it any other man who wants them can come in and sign his name by so and so and pay the bill and take the liquors out, and that is the thing we want to prohibit.

Mr. PARKER. Well, would not the putting of C. O. D. deliveries under the control of the State meet that difficulty?

Mr. CALDERHEAD. That might affect other business. If it was applied only to intoxicating liquors it would be all right.

Mr. SMITH, of Kentucky. Have you read the Williams bill?

Mr. CALDERHEAD. No; I have not looked at any of the bills except this one, because it was the only one I was advised would be under consideration.

Mr. BRANTLEY. The second section of Mr. Littlefield's bill making the place of delivery the place of sale in C. O. D. shipments, under that, with prohibition in your State, if a man in New York should ship liquor C. O. D. to Kansas he would be a criminal under the Kansas law, would he not?

Mr. CALDERHEAD. I would not like to undertake at once to construe that section. I looked at it and it struck me as rather remarkable. The fellow that ought to be convicted, though, is the express agent who undertakes to do that.

Mr. BRANTLEY. But the man who made the sale in New York, the law reading that the place of delivery shall be the place of sale, under this will make the sale in Kansas, and though he had never been in Kansas he would be criminally liable in Kansas.

Mr. CALDERHEAD. I do not think he would be prosecuted unless he came to Kansas, but his goods would be confiscated and the liquors could not be delivered for the subject of a beverage. If he did not

come under the jurisdiction of the Kansas courts I do not think any effort would be made to prosecute him.

Mr. STERLING. Would those communities be any better off with any of these bills?

Mr. CALDERHEAD. I do not know that they would, because, as I say, the public sentiment has to be educated there. But the other 1,300 stations in the State, in little agricultural communities, who desire this protection, who are entitled to it, would be better off; there could not be 1,300 express offices, each a constant saloon; and they are the communities that I am especially talking about. Some day when public sentiment is strong enough, some day when the moral forces are strong enough in the State, we will enforce the prohibitory law in Leavenworth and Wichita and all other cities that now violate it. That is a question we will have to take care of ourselves, and that you can not take care of for us. All we ask is for you to take off the protecting hand of the interstate-commerce clause from the express agent who deals out liquors and knows that he is violating the law in doing it.

Mr. PARKER. I understood you to say that you prosecuted the express agents, and wherever they delivered liquor to other persons than the original consignees you were able to convict them?

Mr. CALDERHEAD. Yes; there is no question about that.

Mr. PARKER. It has always been my view that it was a sale.

Mr. CALDERHEAD. It was a sale, and I convicted them; that is all; but it is quite a while now—more than twelve years—since I attempted the prosecution of any of those cases, and I have almost forgotten what the Wilson law provides.

Mr. SMITH, of Kentucky. If that is the status of the law at present in Kansas, and I apprehend that is entirely correct, what more do you think ought to be done? If express agents who deliver packages to these people to whom they are not consigned can be convicted, what else do you want?

Mr. CALDERHEAD. I want this clause taken off, so that they can not deliver them to the parties to whom they are consigned, for that amounts practically to a sale at that place for a beverage in violation of the law of the State.

Mr. SMITH. Your purpose, then, is to prohibit any citizen of Kansas from shipping a package of liquor in for his own personal consumption if he wants to?

Mr. CALDERHEAD. Not quite that; the thing I want to do is to prohibit the express agent from selling to a man who comes in to buy; I don't know of any law that could be enacted that would prohibit me from buying liquors in New York and shipping them to myself and having them consigned to me; I don't think any such law ought to be passed.

The CHAIRMAN. You are talking in opposition to this bill then, for that is what these gentlemen have said this bill would do; they have said it repeatedly.

Mr. CALDERHEAD. Not quite—

Mr. SMITH, of Kentucky. I understood you to say that where the express agent delivered liquor to a person to whom it was not consigned you could convict him now?

Mr. CALDERHEAD. Yes.

Mr. SMITH. You do not want to convict them for delivering it to persons to whom the liquor is consigned, do you?

Mr. STERLING. That is for personal use?

Mr. SMITH. Well, for any use?

Mr. CALDERHEAD. That is not quite it. If I bought in Pittsburg or Philadelphia liquors for my own personal use and had them consigned to me I don't know why any law should prohibit that, but if liquors are shipped to the express agent in my town and he sells them to me I don't know why he should be protected.

Mr. SMITH. But I understood you to say that you could convict them now?

Mr. CALDERHEAD. I understand so, but the conviction fails there in the State.

Mr. SMITH. But is not the failure due to the sentiment there?

Mr. CALDERHEAD. No, not quite. Most of the convictions have been set aside for the reason that the agent was protected in some way or other in under this interstate-commerce clause.

Mr. PARKER. Now, Mr. Calderhead, let me ask you this further question. If a law were passed prohibiting these C. O. D. shipments would not that cover the case?

Mr. CALDERHEAD. I am not sure that it would cover it but it would go a long ways in assisting the securing of obedience to the law there.

Mr. SMITH. I wanted to ask you how much we would gain in a moral way. Supposing Congress could and did prohibit the transportation of liquors out into one of these towns that you have mentioned. Now, what would hinder these men from going across the river and into another county and buying; in other words, what is to be gained by this legislation if you are openly selling it there and fining them for it in violation of the Constitution what is to be gained by the legislation?

Mr. CALDERHEAD. Leave the question of those fifteen or eighteen places that are in the State where public sentiment is in favor of violating the law aside, I speak of the large number of counties and large number of small towns and communities where we would gain.

Mr. SMITH. But supposing Congress did exclude liquor from those 115 counties that you are speaking of and no man living in one of those counties could get liquor from Kentucky or any other State; I say what is to hinder him from going into these 15 towns and buying; in other words, what is to be gained by the legislation?

Mr. CALDERHEAD. Distance and carfare and a lot of other things would hinder him from going into those towns. I have not been in Leavenworth myself but twice in twenty years, and I am not a hundred miles away.

Mr. SMITH. But Leavenworth could ship it to him?

Mr. CALDERHEAD. The State law will take care of that part of it.

Mr. STERLING. They would have to prosecute them in Leavenworth where there is that popular sentiment against the enforcement of the law.

Mr. CALDERHEAD. Not quite; if the delivery was made at the station and the money received for it there the sale would be there.

Mr. SMITH. But suppose it was made at Leavenworth?

Mr. CALDERHEAD. Well, suppose it is; why should you go on protecting it as far as you can; why should you? We will do the best

we can with our end of it. Why should you go on and protect it with your end?

The CHAIRMAN. If I understand you correctly, you said you do not know of any law that could be passed that would prevent a man sending for liquor for his own use, and you do not think that such a law should be passed, and yet, as I said when Mr. Littlefield was out—and so he did not hear it—you are speaking against the bill, because the gentlemen here the other day said that is what they wanted, the very thing you say you would not be in favor of.

Mr. CALDERHEAD. I am not responsible for anyone else's opinion; I am only stating my own.

Mr. PALMER. I have not heard anybody before who said he was not opposed to the personal privilege. Everybody but Mr. Calderhead seems to think the bill we reported last year was a bad bill; the brewers and distillers don't want that and the temperance people don't want it.

Mr. CALDERHEAD. I did not see it, and I am not discussing that.

Mr. PALMER. That is the one that had the personal-privilege clause in it, to enable a man to secure liquor for his own use. Nobody seems to be in favor of that.

Mr. CALDERHEAD. I think anybody in the United States has the right to buy any commodity any place, except where the State jurisdiction prohibits it, and in this case I don't know any reason why Congress should go on assisting the men who desire to violate the law. I would like to examine this second clause a little further before I say how much I would add to it. I think the section in some way or other ought to limit it to the carrying and sale of intoxicating liquors. I would not like very well to have that section apply to the purchase of a suit of clothes in Chicago.

Mr. LITTLEFIELD. It could not do any harm where you were doing a legitimate business.

Mr. CALDERHEAD. I have said much more than I intended to when I came in, and I thank you for the opportunity.

**STATEMENT OF HON. WILLIAM A. REEDER, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF KANSAS.**

Mr. REEDER. Mr. Chairman and gentlemen, I was rather amused when the gentleman from Pittsburg was talking in regard to the Germans and their descendants. I am a German, descended from a German family, and was born in Pennsylvania. When I heard his sentiments I was glad that it was my good fortune to have been moved away from Pennsylvania early in my history. I have resided in Kansas for over a third of a century.

A great injustice is being done to the rural population of Kansas. We have a saloon in every town, kept there contrary to local law, and that saloon is run in this way:

A man comes in from Missouri, or some other State, sent by some liquor house, who makes out a fictitious list of names, and he has a hundred jugs of whisky sent in by express to those names. Then the boys of that town, if they can be educated up to it, will go to the express office, pay the sight draft, take the whisky and get drunk. The Government of the United States thus has a saloon established in

every town in Kansas, against the will of our people as expressed in their State constitution and laws, and I belong to that class of Germans who believe that when the people of a community or State determine they will enact a certain law that the Government should not step in and assist in disobeying that law. I am no lawyer, but I know that this committee can frame a bill, if they so desire, and can pass it through Congress, that will put these beverages under the ban of the law of the State when they come within that State.

Personally I do not wish to put myself in a position, nor I do not wish the State to, that will prevent any citizen of that State who desires to ship any beverage into the State for their own use, and I believe if you should pass a law the effect of which would be, as some of you have said, to deprive the individual of this right, that there would be no law passed by the State that would prevent a man from sending for liquors for his personal use.

Mr. STERLING. Why don't you prosecute them under your State law then?

Mr. REEDER. I do not understand whether that law can be enforced or not. I see Mr. Calderhead thinks it could be at one time, but I can say that it is not enforced, and we have a pretty fair set of lawyers in Kansas. A good lawyer gave up the task a week or two ago in Topeka after trying it for some time. He is in favor of prohibition and in favor of enforcing the law, but he found that it was simply impossible. I believe every one of you will agree we have a right to make a law and have it obeyed, and that the least the United States could and should do would be not to give aid in having it disobeyed. I believe I have seen a hundred jugs in an express office addressed to names of parties that never existed, and any boy can go there and get it by simply paying for it.

Mr. SMITH. Are they sent C. O. D.?

Mr. REEDER. Yes; but to fictitious persons. Some men utterly irresponsible, probably not capable of getting any other job, and men who are, if you will excuse the expression, certainly a very measly looking set of fellows, are sent out to sell this whisky.

The CHAIRMAN. You say those men come from Missouri?

Mr. REEDER. A good many come from Missouri, because it is the nearest State where intoxicants can be had legally.

Mr. LITTLEFIELD. That is the nearest place to come from?

Mr. REEDER. Yes, sir. I am quite sure of these intoxicants come from St. Louis or from farther east; I am not acquainted with the source of supply.

Mr. SMITH. I have no doubt you will find some Kentuckians there.

Mr. DE ARMOND. Do your lawyers and judges believe they can not prosecute these men successfully under the present law?

Mr. REEDER. Yes, sir.

Mr. DE ARMOND. This committee believes unanimously, I think, that they are all wrong; that if these parties who are violating the law were properly prosecuted by attorneys who knew the law and before judges who would do their duty and before honest juries, that convictions could be obtained; I do not believe there is any question about that. Everyone of those sales is a sale right there and nowhere else.

Mr. REEDER. I am saying that we do not control these sales. Why do these men come here now and try to prevent having this kind of a law passed? It is because they fear we will control it and carry out

the law. We do not control it now. You say, What effect would it have upon these fifteen places that Mr. Calderhead spoke of? Probably no particular effect, but it will have an effect upon forty-nine out of every fifty settlements in Kansas; forty-nine out of every fifty communities are suffering on account of the nonpassage of this bill, and you know it can do no harm to pass it—unless it does harm to this illegal traffic in whisky—and if that is true why not pass it?

I am no lawyer, but the members of this committee can formulate a law that will relieve us of this difficulty, and it is a deplorable difficulty to all citizens of Kansas who desire to have the laws enforced.

Mr. BRANTLEY. Do you think we ought to pass a law that if it did no harm to anything else would do violence to the Constitution?

Mr. REEDER. No, sir; I do not think you need to pass any such law. In my judgment you can pass a law that would remedy this difficulty and not do any violence to the Constitution.

Mr. PARKER. I asked Mr. Calderhead whether a law that would put C. O. D. deliveries under State control would not meet all difficulties. What is your opinion about that?

Mr. REEDER. I can not say; I am not a lawyer. I think I would be a poor judicial adviser to the Judiciary Committee of the House, but still I insist that you gentlemen can formulate a law that will meet the difficulty and come within the Constitution.

Mr. PARKER. You can tell me this. The only difficulty is with C. O. D. deliveries, is it not?

Mr. SMITH. You are stating your grievances. I think, of course, the committee can formulate a law that will reach that condition of affairs; I have no doubt about that.

Mr. REEDER. In 49 out of 50 cases this law will remedy the condition, and our lawyers think they can not remedy it by a State law. I hope you will frame a law that will permit us to carry out our own prohibition laws in Kansas. Simply permit the Government to get out of the whisky business in Kansas.

Mr. BRANTLEY. You do not appear here in favor of any particular bill?

Mr. REEDER. No, sir.

Mr. BRANTLEY. What you want is a remedy?

Mr. REEDER. Yes. I do believe you ought to permit a bill of this kind to come before the House and be voted on. The gentleman from Wisconsin spoke about public sentiment compelling men to vote on certain things. I believe that public sentiment should be worked up just as high as it can be in favor of everything that is right, because public sentiment does control us, it controls me; I do not see why it should not, and I do not see why any set of people should not formulate public opinion in any direction.

Mr. PALMER. You mean in the direction you think is right?

Mr. REEDER. Yes, sir.

Mr. PALMER. But if a set of people go to work to formulate public opinion in a way you think is wrong, how then?

Mr. REEDER. I do not believe people differ very much as to this prohibition question in Kansas as to what is right.

Mr. SMITH. Yes; they are differing very widely on this proposition.

Mr. REEDER. I will tell you public opinion in some things is made up by the interest of the people the men represent.

Mr. PALMER. Altogether.

Mr. REEDER. If I had several large breweries in my district the chances are I would not be here, if I had the same opinion I have now; I know I would not. They are not sending men to Congress from Kansas that do not believe in prohibition. We have a community where a sentiment against the sale of intoxicants is strongly intrenched. That sentiment seems prevalent in the South also, but my judgment is they have developed as good a set of laws on the subject as we have. Our law is all right, if the United States will only permit us to carry it out.

Mr. De ARMOND. I presume that as a matter of fact these anti-liquor laws are enforced better in the South than anywhere else in the States. Take Georgia, take Texas; you will find their laws enforced.

Mr. REEDER. That may be; I only get information from Columbia, S. C., where I looked the matter over personally. I thought they were making a failure of their law at the time I was there, but I realize there is a wonderful good sentiment on the temperance question in the South, and I suspect in many places it is well enforced, and I am glad of it. I believe if we can make this nation a temperate nation we have made a great stride toward perpetuating it.

Mr. TIRRELL. Do they have open saloons in Leavenworth?

Mr. REEDER. Yes.

Mr. TIRRELL. Then there will be no necessity of C. O. D. shipments there.

Mr. REEDER. No, sir; it is wonderful how they can disobey the Constitution and the laws there, but they do. In the rural districts the laws are quite generally obeyed. I thank the committee for this opportunity to speak to you on a subject of great importance in my judgment.

STATEMENT OF HON. JUSTIN D. BOWERSOCK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS.

Mr. BOWERSOCK. Mr. Chairman and gentlemen, I shall not detain you long. I want to speak only of my town and more particularly of my interest in some such bill as is proposed. I can not speak to you as a lawyer, but I think I do know something about conditions in Kansas and about the question of temperance. My town is one of from twelve to fifteen thousand inhabitants, the location of the State university, and also of the Government Indian school. At the latter there are from 600 to 800 young Indian boys and girls, a school supported by the people of the United States. We make appropriations here annually for that Indian school. For more than twenty-five years there has not been an open saloon in this town of Lawrence, which is 40 miles west of the Missouri River, west of Kansas City.

There have been "joints" there, and there is more or less drinking. What I believe can be largely prevented by some such legislation as is proposed is this condition particularly: Young students club together, raise a certain amount of money, telegraph or telephone to Kansas City, Mo., for beer or liquor to be sent to Lawrence C. O. D., and when it comes there they take it from the express office with the usual results. I think you fully with myself are interested in preventing the sale or the use of liquor by these young people of our State, some 1,500 students in the university, and 700 or 800 Indians

at Haskell Institute, because these Indians get "off the reservation" at times and are taken back to school under the influence of liquor.

It is a too common thing in my town, more particularly late in the week, Friday or Saturday night, for these young men to carry this liquor from the express office to their rooms or to their clubs and have their carousal. We have "joints," so called, in Lawrence—that is, a place where men in violation of the law can get liquor in this way through the express company C. O. D. packages, and secretly, it may be, dispose of it to parties who will go to them for the purpose of purchasing it—parties usually in whom they have confidence, whom they will believe will not expose them to the law.

The officers in my town are endeavoring to enforce prohibition, and except along the lines I have indicated they succeed. I believe there are young men going to school in Lawrence, perhaps hundreds of them, who have never seen an open saloon in the State of Kansas. Many of them go outside of the State, of course, and see places where liquor is sold, and it has seemed to me—it does seem to me—that some such legislation as is proposed will help the people in my State to better enforce temperance there than is possible under conditions as they exist at this time.

Mr. SMITH of Kentucky. The chief trouble is in the C. O. D. business; that is the source of the great trouble there, is it not?

Mr. BOWERSOCK. As a rule these young men or older men would not go to Kansas City, buy liquor and pay for it, and take it or have it sent to Lawrence. They can readily get supplied C. O. D., and do; not only the young men, of course, but others. And the evil in my town may be greater because we have young men from all parts of the State, and hence the greater need of a safeguard.

Mr. DINWIDDIE. I want to introduce Dr. Howard H. Russell, an attorney at law, chairman of our national headquarters committee. Mr. Russell is from New York.

STATEMENT OF DR. HOWARD H. RUSSELL.

Mr. RUSSELL. Mr. Chairman and gentlemen, our legislative superintendent of our antisaloon league is to present the legal argument in closing our case before you, and so I will not take time upon that point. What I wish to urge especially is with reference to the general proposition, and with reference also to the objection which we have among the officers of our antisaloon league and our workers throughout the country to the introduction of any amendment to the Littlefield bill as it is now pending before the committee. I suppose that all understand that in the States we have come to a point now where the principle of local option in dealing with the liquor question is a generally accepted principle on the part of the people of the whole country, both from the standpoint of citizenship and also from the standpoint of the courts.

There are thirty-eight States in the Union where local option in some form is provided for; there are sixteen States in which they can vote by counties whether they will have saloons among them or not; in the rest of the States, either by municipality or by wards or by resident districts, the people can deal with this question and settle it for themselves as to whether they will have liquor selling as a beverage

among them or not, and the courts universally hold this method of dealing with the question is a proper one.

If, as Mr. Dinwiddie will show, it is perfectly constitutional for the Congress of the United States to strengthen the provisions of what we have known in the past as the Wilson law, so as to withdraw the oversight of this business which is now impliedly and directly held by the United States in connection with the interstate commerce law, so as to relegate to the States the whole question of dealing with the liquor traffic, then we insist in our hearing before you that the United States ought to do for each individual State in the Union what the individual States are now doing for the counties and the various localities in the States, namely, giving the States local option in dealing with this liquor question, which will be the result, as we anticipate, of the report and passage of the Littlefield bill as it is pending before you.

The operation of such a law is not going, perhaps, to directly help to better enforce law in such communities as Leavenworth, Kansas City, Kans.; Rutland, Vt.; or Brattleboro, Vt., but it is going to have this result: In States where local option has been adopted it will enable them to go forward in the enforcement of law unhampered by the handicap that has been on the States through the interstate-commerce clause of the Constitution. Now, take it up in Vermont. When the question was up there some three or four years ago as to the repeal of the State prohibition law, one great argument used by those in favor of repealing the law and substituting local option—the great argument was that liquor was being sent there from New York State into the various communities in Vermont, and that the result was being accomplished of the sale and use of liquor through the interstate privileges accorded to the brewers and liquor dealers of New York State, and that the prohibition law was thereby rendered nugatory. And so they insisted that it ought to be abolished, since they would have liquor anyhow under the interstate-commerce provisions.

Referring to that feature of it, which applies to all these municipalities of these different States, we insist that the United States should withdraw this oversight of the liquor question which is implied in the use of the present interstate-commerce regulations.

Mr. BRANTLEY. May I interrupt you to ask a question?

Mr. RUSSELL. Certainly, sir.

Mr. BRANTLEY. You understand the law now to be that the moment liquor is shipped from one State into another and delivered to the original consignee it becomes subject to the law of that State?

Mr. RUSSELL. After delivery.

Mr. BRANTLEY. Now, do I understand that you are seeking the power in a State to prohibit the importation of liquor at all into a State?

Mr. RUSSELL. What we are seeking through the Littlefield bill, what we desire to see, is that the whole question of the application of the law to the liquor question shall apply when it crosses the line, whatever those regulations may be, leaving it to the citizenship of the States, acting through their legislators, to determine what those regulations may be.

Mr. BRANTLEY. It can not be sold now in the States unless the laws of the State are violated; the question of sale the State now absolutely regulates; the additional power you seek is to allow the State to prevent it from being imported?

Mr. RUSSELL. If the State legislature should see fit to do that; to provide that it might not be sold for any purpose.

Mr. BRANTLEY. Well, having the full and complete power to prohibit the sale, what would you acquire by the Littlefield bill would be to prohibit the importation.

Mr. RUSSELL. To reach it before it is delivered to the consignee in railroad stations and express offices.

Mr. BRANTLEY. That is to prohibit its importation?

Mr. LITTLEFIELD. Well, very likely.

Mr. RUSSELL. If the State desires to do that, that is what we insist the State ought to have the right to do. Of course, what will be done in the States will depend upon the public sentiment in those States and the legislation enacted in view of that public sentiment. Now, take the proposition to amend the law, which it is reported is considered possible by the committee, the same as last year, where you except in the shipment the delivery for personal use.

Now, while that seems a reasonable proposition, in view of the fact that most of the States allow the sale and delivery for personal use—the Ohio statute, for instance, provides that in the case of sale it excepts the sale for personal consumption, personal use, and, I think, that is the statute in the case of some other States—yet we could conceive it possible that a State legislature might think best to prohibit even the delivery of liquors for personal use. They might see fit to do that. What I insist upon is that the States have a right to do that if they choose to do that; good lawyers insist that it would be a constitutional provision to prevent the sale for personal use if the legislature saw fit to do so.

Mr. BRANTLEY. Did not the Supreme Court in the South Carolina dispensary case say the right to receive liquor for personal use was a right granted by the Constitution of the United States?

Mr. RUSSELL. That may be so, possibly.

Mr. BRANTLEY. And if the Supreme Court has said that is a right granted by the Constitution could the State take away that right from the individual?

Mr. RUSSELL. As good a lawyer as the dean of the Harvard law school is teaching the class there that the legislature of the State would have the right, in view of the evil effect of alcoholic liquors on public health and public morals, to prohibit their sale for personal use if the State saw fit so to do.

Mr. PALMER. Mr. Brantley has stated what the Supreme Court said about that; of course the dean of the Harvard Law School may be wiser, and no doubt he is, but the Supreme Court's decision is what we have to recognize at present.

But the right of persons of one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine this contention—then they are void.

Now, if a man has a right to ship it into a State for his own use evidently the man in the State has the right to receive it, and that they say is a constitutional right which does not rest on the grant of the State law.

Mr. LITTLEFIELD. And the court here were considering this interstate commerce clause specifically when they used that language, and

the case of *Vance v. Vandercook* rested entirely on the question as to whether the individual to whom the liquor was shipped could have it delivered to him for personal use. Of course if under *Rhodes v. Iowa* he could have it delivered to him for sale it would be absurd to say that he could not have it delivered to him for personal use, and it was a case of personal use and not a case of sale that the court was passing upon there. The court was construing this interstate commerce clause when it held that the Constitution did guarantee the right to have the liquor delivered, and so it does, under the interstate commerce clause as it now holds, under the construction of the court in *Rhodes v. Iowa*.

Mr. PALMER. Then the proposition is to change the law to get around the constitutional right and amend it by some legislative action.

Mr. LITTLEFIELD. The only way he gets a constitutional right is under the interstate commerce clause, and when the interstate commerce clause incumbrance is removed the only thing standing in the way of the State carrying out that law will be removed. Before the Wilson law he had a right to receive it and sell it in the original package; the Constitution of the United States gave him the right to sell it in the original package.

The Wilson law removed the interstate-commerce clause perhaps to that extent and did not allow him to sell it, pro tanto it deprived him of his interstate-commerce right under the interstate-commerce clause; so, pro tanto, in this case there is nothing in *Vance and Vandercook*—because they were there expressly considering the question of whether liquor should be delivered to a man in South Carolina for his personal use, and clearly under the Wilson law, the court having held that it did not arrive until it reached the hands of the consignee, of course he had a right to receive it—and in connection with that case and under the interstate-commerce clause the court used that language. I think that is an exact statement, Brother Palmer, of the situation.

Mr. DINWIDDIE. Is it generally known that the Supreme Court of the United States has actually passed upon the proposition affirmatively, that a man can not manufacture intoxicating liquors for his own personal use contrary to the laws of the State; is that generally known?

Mr. BRANTLEY. That is a matter that the State regulates; this is a matter of importation into the States under the protection of the Constitution of the United States.

Mr. DINWIDDIE. Yes, but you asked that question whether under the case of *Vance v. Vandercook* a man has a constitutional right to import for his own personal use?

Mr. BRANTLEY. But the right to manufacture liquor in a State is a matter that Congress has nothing to do with; but the right to import from another State is a matter that comes under the jurisdiction of Congress and of the Constitution of the United States under the interstate-commerce clause.

Mr. LITTLEFIELD. Yes; the interstate-commerce clause.

Mr. DINWIDDIE. Which reads that Congress shall have the power to regulate commerce among the several States.

Mr. PALMER. Do you think that gives the right to prohibit commerce?

Mr. DINWIDDIE. Yes.

Mr. SMITH, of Kentucky. That is hardly a fair statement. The

proposition is, Has Congress the power to so regulate commerce that the State can exercise power over interstate commerce in that State.

Mr. BRANTLEY. It is not a question of Congress establishing rules for the regulation of commerce, but the proposition is that Congress can relinquish its jurisdiction and let the States take it.

Mr. PALMER. This question was altogether settled in *Scott* against *Donald* (165 U. S.), that Congress could under the interstate-commerce clause prohibit the importation of anything recognized as an article of commerce.

Mr. BRANTLEY. Perhaps.

Mr. PALMER. In the exercise of the police power and under the Minnesota act, they undertook under the guise of an inspection law to prohibit the importation of cattle into the State of Minnesota, and Justice Harlan said that meat was a well recognized article of diet throughout the United States, and Congress could not prohibit the use of meat in Minnesota, and that the State could not pass a law prohibiting in Minnesota the use of meat that came from other States.

Mr. RUSSELL. I was going to leave these questions to Mr. Dinwiddie:

Mr. PALMER. You were introduced as the attorney of the association, and I supposed we would have a right to question you.

Mr. BRANTLEY. If the Supreme Court really meant what it said, that a man had the constitutional right to import liquors for his own use—

Mr. RUSSELL. Under the existing law.

Mr. BRANTLEY. And under the Constitution—their language was that he had the right under the Constitution—and I apprehend whatever right he has under the Constitution Congress can not take from him.

Mr. SMITH. You drift into an error right there, I think, Judge Brantley.

Mr. BRANTLEY. This is the question I wanted to ask Mr. Russell. If that construction of the Constitution is correct, would it not tend to save the validity of this very law by making it comply with that language of the Constitution, or otherwise would you not run the risk of having your whole law thrown out?

Mr. RUSSELL. The law has been thoroughly looked into, and I think we would be entirely satisfied with it.

Mr. BRANTLEY. You were speaking specifically against that amendment, and I was simply asking you whether that amendment would not tend to save the validity of the law.

Mr. RUSSELL. Of course what we object to is an amendment that is absolutely sure to open the way for evasions and to weaken the possible good results that would come from a clean turning over of this question to the States without any amendments. You could go ahead and provide amendments allowing shipments, say, for mechanical uses, for pharmaceutical purposes, and go on and name the various purposes the State recognizes as proper uses of intoxicating liquors, but what we ask for at the hands of the committee and at the hands of Congress is a law that will turn the handling of the whole question over to the States much in a local-option way.

I have nothing further to say except to emphasize the fact that the public sentiment of this country taken together is up to the standard of the passage of the Littlefield bill, and we believe that the courts of the country taken together will stand by Congress in such an enactment.

Of course you are confronted here in the consideration of this question by the expressions of popular sentiment and the personal views of individuals on both sides of the question, and men come here, as we heard them to-day, expressing their opposition to this bill for various reasons, personal in their character, and I am ready to concede that the friends of this measure appear here in the same way, ready to stand by their position from the standpoint of their judgment, and willing to stand by it from the standpoint of citizenship.

I felt some indignation, Mr. Chairman, when the speaker here this afternoon gave utterance to the sentiment that some of the Members of Congress with whom he had conversed were proposing to vote for the measure upon the ground, not that they thought it was a reasonable proposition to submit the question to the States, but upon the ground that their constituents were taking a cranky view of the question, and that they were compelled to go against their own judgment because of the sentiment in their districts. One speaker said, "I consider it unfair and cowardly upon the part of the people who thus bring their influence to bear upon Members of Congress." But, Mr. Chairman, is not that exactly what those who represent the interests of the other side are doing and have been doing in the past years of our experience in all these States?

Quite recently, Mr. Chairman, a very clear-cut and lucid editorial upon this question was written and published in the New York Times. It was headed "Fighting fire with water," and the editorial went on to say that the liquor dealers of New York State and their friends among the politicians were complaining because an organization had been formed in the State of New York, which was going up to Albany to insist that the legislature should pass an extension of the local option privileges from the towns to the cities of the State, giving the people the right, if they had a majority of the sentiment that way, to vote the saloon out, and that they were resenting the fact; but the Times went on to say that this is exactly the method that has been the practice of the liquor dealers in the past; that they have insisted that they had the votes to stand by or defeat men upon the proposition that they should stand by them and their interests in legislation, and the Times went on to say that they thought it was a good omen, and a good day had come when the temperance people had waked up to stand by those men that did right on the question, and they considered that fighting fire with water, and that that was the proper way to carry on the campaign. That was the New York Times.

Now, one of the speakers this morning read from an editorial in a German paper published in Chicago, in which he sought to bring in before this committee this very proposition to impress the committee and to impress Congress with the idea that the German-Americans as a class would be against Members of Congress who should put themselves on record in favor of this measure, and he read that portion of that editorial very clearly and emphatically which said "No Congressman favoring these measures is entitled to the indorsement of German-American citizens in the future." Now, after all, is it not true that public sentiment is really the thing that is in the scale in the consideration of this question?

I think you will all agree as lawyers, having carefully considered it, that it is perfectly constitutional for the Congress of the United States to pass the Littlefield bill, that Mr. Littlefield has been within the

range and purview of the Constitution in drawing it. After all, it is a question, when it comes to be put up to a vote in Congress, whether the people of the United States will stand by Congress in the enactment of it or not, or whether there be classes of the people, racial or otherwise, that will be so much offended and will carry that offense so positively into their political action as that it will make it improper and unwise and unpolitical for the Congress to pass the measure.

Mr. PALMER. Suppose a member of this committee or a number of members of this committee would think the measure unconstitutional; would you expect them to vote for it?

Mr. RUSSELL. No, I should not say so; I argue, of course, that it is constitutional.

Mr. PALMER. You would not ask Members of Congress to vote for it if they thought it was unconstitutional?

Mr. RUSSELL. Not at all.

Mr. PALMER. This is not a town meeting to determine what the town sentiment is, but the question is whether it is constitutional.

Mr. RUSSELL. I am proceeding to answer these statements made here from the standpoint of racial notions about this question, and what I wanted to say in connection with that is that it is indeed a good day we have fallen upon now when questions of this kind can be considered from the standpoint of public sentiment and organized public sentiment, so that when men do perform their duty in a manly and courageous way in Congress or in State legislatures they are stood by in an organized way, just as it has often been in past years that they were not stood by on the part of the good people and moral people who were interested in this kind of legislation.

We have had a good many illustrations recently in different States of the ability of the moral people to stand by the kind of men who stand by this kind of legislation. Take it in New York. A bill was introduced by a member of the legislature from Westchester County providing for local option, and the legislature, after a good deal of personal appeal, did pass that measure through the assembly. Then it was a question, which is always up before us, as to whether we could justify the requests and assurances we had made to the different members of the legislature, and in January of this year we were able to demonstrate the fact that we had popular sentiment with us, for not a single member of the legislature who voted in favor of the extension of the power and privilege of the people on this liquor question, not a single man, fell by the way, either for renomination or reelection, by reason of having voted for the local-option measure, and in case of the member of the legislature referred to, while the year before he got 700 majority, his majority was increased this time to nearly 3,000.

So I want to say it is not unfair and it is not cowardly for the moral sentiment of the community to express itself in dealing with such a provision as this, that will give the entire control of the question to the States, and it is not cowardly or unfair for these men to come to the front and stand by the men who stand by that kind of a measure. As the gentleman from Kansas has said this afternoon, there are a good many German-Americans in this country who are in favor of the very kind of legislation that we are pressing here. We have in connection with our organization two or three bodies of Christian people made up of Germans who speak the German language and whose sermons are preached in German. The German Episcopal and German

Evangelical churches stand in favor of progressive temperance legislation, and that is true to a great extent with a great many Lutherans in this country. It will not do to group the Germans by themselves and say they oppose this legislation. So I ask you on behalf of the organization I represent to report this bill without amendment, and as an organization I want to say that we propose to stand by the men who stand by the bill.

ARGUMENT OF REV. E. C. DINWIDDIE, LEGISLATIVE SUPERINTENDENT ANTISALOON LEAGUE OF AMERICA.

Mr. DINWIDDIE. Mr. Chairman and gentlemen of the committee: I want to beg the pardon of the committee for something I can not help, and at the same time beg its indulgence. I have been unfortunate in being housed for four weeks with a case of sickness, and have just come out to-day for the first time, so that I am anything but at par. However, I have some considerations which I hope to present to the committee, some of which I think have not been presented before, and while I do not ask not to be interrupted, before I get through I hope to cover most of the points that have in a sense been in controversy, and if you will allow me to finish in that way I shall be very glad to be subject to any catechization which the committee desires. At the same time, if I should make a misstatement of fact or misquote a decision or should err in the law, I should be very glad to be called down on the spot, for I shall attempt not to err in those ways, and, of course, I believe we best serve any cause by being absolutely accurate in our statements and terminology.

We are here in behalf of the Littlefield bill (H. R. 13655). This bill is the same in intent as the Hepburn-Dolliver bill, so called, introduced in the Fifty-eighth Congress. The first section is slightly modified in language, so that its actual intent as a direct regulation of commerce by Congress is made clearly manifest. A second section is added which conforms to the well-known practice and usage in the commercial world in which C. O. D. shipments are held subject to the order of the consignor until actually delivered to the consignee after the payment of the price of the goods transported, together with the transportation charges by the consignee, and generally with an additional charge, designated in the business world as a C. O. D. return charge, to pay the cost of transmission by the common carrier of the purchase price from the consignee to the consignor at the original place of shipment.

It was my intention to set forth at all necessary length the necessity for some adequate legislation of this character to meet a condition which was unexpectedly imposed upon the States by the decision of the United States Supreme Court in what were known as the Iowa Transportation and Original Package cases, known as the *Bowman v. Northwestern Railway* (125 U. S., p. 465) and the *Leisy v. Hardin* (135 U. S., 100) cases, respectively. It has become, however, almost unnecessary for me to do this, in view of the full and convincing statements from their own observation concerning the need of such legislation by Congress which have been made before this committee during the progress of these hearings, particularly by Mr. Williams, of Mississippi, and Judge Smith, of Iowa, both members of Congress and both personally cognizant of existing difficulties in the enforcement of

State legislation because of the inaction of Congress under the decisions referred to and the later construction of the Wilson law in *Rhodes v. Iowa* (170 U. S., 412). I shall take occasion, however, simply to advert to such necessity when the proper point in the history of Supreme Court decisions touching intoxicating liquors is reached in this argument.

I desire to set forth succinctly the various decisions of the United States Supreme Court from the earliest cases down to the present, so far as they have a bearing upon the proposed legislation before your committee. I expect to be able to show that while admitting the exclusiveness of the power of Congress to regulate interstate commerce as delegated to it by section 8 of article 1 of the Federal Constitution, it is the unquestionable fact that the States never delegated what are universally known as their police powers, and under which are grouped all legislation for the conservation of the public health, the public morals, and the prosperity and peace of their own citizens, to Congress. This was never contended, that I am aware of; but in order that there might be no doubt whatsoever upon the subject the people of the various States added a specific amendment to the Federal Constitution whereby they declared that all powers not delegated to the United States were reserved to the States or to the people. (Tenth amendment to the Federal Constitution.)

It is also easily demonstrable that under these reserved powers they exercised complete control of the liquor traffic within their borders, whether that traffic was wholly internal or whether the liquors had been imported from foreign countries or from sister States. This was done in the absence of any specific regulation of the same traffic by Congress. This continued practically unassailed from the adoption of the Federal Constitution until the celebrated license cases came before the Supreme Court on error from the State courts of Massachusetts, Rhode Island, and New Hampshire. The cases for the liquor-traffic men were argued by the most eminent counsel which the country afforded at that time, Daniel Webster and Rufus Choate appearing for those interests against the constitutionality of the State legislation of the Commonwealths referred to.

Although the eminent judges on the bench at the time these cases were tried in 1847 did not wholly agree in the reasoning by which they reached their conclusions, Chief Justice Taney and five other justices delivered able, and in some cases, lengthy opinions, and a sixth associate justice, Mr. Justice Nelson, announced his concurrence in the views of the Chief Justice and Mr. Justice Catron, and all reached the decision that the legislation of these States was valid as an exercise of their police powers, and although in two of the cases, namely, *Thurlow v. Massachusetts* and *Fletcher v. Rhode Island*, the liquors which gave rise to the controversy were of foreign importation, and in the case of *Pierce v. New Hampshire* the liquor was a barrel of gin imported from a sister State coastwise into the State of New Hampshire, and the State regulations, therefore, by the imposition of a tax or license fee and in one case by the total prohibition of the sale, amounted to a regulation of commerce with foreign countries and among the States of the Union, they were nevertheless not repugnant to the commerce clause of the Constitution, because Congress had not legislated upon the subject, and the virtual holding of the court was that the silence of Congress upon a subject of that character, which vitally affected

the effect of the internal laws of the State for the protection of the health and morals of their people, indicated thereby its willingness that the States should so legislate as to conserve their welfare in that regard, and so far as outside interference was concerned should in that way be able to preserve the integrity of their policy on that question. These facts are abundantly substantiated in the License cases, reported in 5 Howard, 504 to 633.

I go further to say that on the subject of intoxicating liquors that decision was acquiesced in by Congress by its continued silence, was looked upon as the supreme and controlling law by the States in the shaping of their legislation on this question, and was recognized by the courts up to the time of the Iowa cases, in 1888 and 1890, respectively, to which I have already referred. Indeed, they were only directly overruled upon the announcement of the opinion in *Leisy v. Hardin*, April 28, 1890.

I need not emphasize before this committee the value to the States of what are commonly known as their police powers. They are vital to their prosperity and integrity. These statements run all the way through the long line of judicial decisions sustaining their exercise in the matter of regulating and controlling and even prohibiting traffic in intoxicating liquors. From the License cases, reported in 5 Howard, down through *Bartemyer v. Iowa* (18 Wall., 129); *Beer Company v. Massachusetts* (97 U. S., 25); *Tiernan v. Rinker* (102 U. S., 123); *Foster v. Kansas* (112 U. S., 201); *Mugler v. Kansas and Kansas v. Ziebold* (123 U. S., 623); *Bowman v. Northwestern Railway* (125 U. S., 465) and *Kidd v. Pearson* (128 U. S., 1); *Eilenbecker v. Plymouth County* (134 U. S., 31); *Leisy v. Hardin* (135 U. S., 100); *Crowley v. Christensen* (137 U. S., 86), and numerous cases since, including the more recent cases of *Riphey v. Texas* (193 U. S., 504) and *Lloyd v. Dollison* (194 U. S., 445), all of these go to show the absolute necessity of the exercise of these powers by the States.

Mr. Justice Harlan emphasized this point in the able dissent in the *Bowman* case which he delivered on behalf of himself and Chief Justice Waite and Associate Justice Gray when he quoted *Sherlock v. Alling* (93 U. S., pp. 99, 103):

In conferring upon Congress the regulation of commerce it was never intended to cut States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country.

And again he quoted from *Patterson v. Kentucky* (97 U. S., 501, 505) wherein "The principle was affirmed that the police power of the State was not surrendered when authority was conferred upon Congress to regulate commerce with foreign nations and among the States." His concluding sentence in that able dissent was:

The reserve power of the States to guard the health, morals, and safety of their people is more vital to the existence of society than their power in respect to trade and commerce, having no possible connection with those subjects.

Still more emphatic as showing the wisdom of that reservation, which was designed to leave with the States the untrammelled exercise of their police powers, are some of the statements in the dissenting opinion of Mr. Justice Gray on behalf of himself and Justices Harlan and Brewer in the Original Package Case of *Leisy v. Hardin*, heretofore referred to. In referring to the case of *Kidd v. Pearson* (128 U. S., 1), the court unanimously sustained the prohibitory statute of Iowa

under review, which prohibited the manufacture and sale of intoxicating liquors for exportation. The court, in showing how impracticable it would be for Congress to regulate the manufacture of goods in one State to be sold in another, said:

The demands of such supervision would require not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent.

A situation more paralyzing to the State governments and more provocative to conflicts between the General Government and the States and less likely to have been what the framers of the Constitution intended it would be difficult to imagine.

Mr. Justice Gray continued:

The language thus applied to Congressional supervision of the manufacture within one State of intoxicating liquors intended to be sold in other States, appears to us to apply with hardly less force to the regulation by Congress of the sale within one State of intoxicating liquors brought from another State. How far the protection of the public order, health, and morals demands the restriction or prohibition of the sale of intoxicating liquors is a question peculiarly appertaining to the legislatures of the several States, and to be determined by them upon their own views of public policy, taking into consideration the needs, the education, the habits, and the usages of people of various races and origin, and living in regions far apart and widely differing in climate and in physical characteristics.

The local option laws prevailing in many of the States indicate the judgment of as many legislatures that the sale of intoxicating liquors does not admit of regulation by uniform rule over so large an area as a single State, much less over the area of a continent. It is manifest that the regulation of the sale, as of the manufacture of such liquors manufactured in one State to be sold in another, is a subject which, far from requiring, hardly admits of a uniform system or plan throughout the United States. It is, in its very nature, not national, but local, and must, in order to be either reasonable or effective, conform to the local policy and legislation concerning the sale or the manufacture of intoxicating liquors generally. Congress can not regulate this subject under the police power, because that power has not been conceded to Congress, but remains in the several States; nor under the commercial power, without either prescribing a general rule unsuited to the nature and requirements of the subject or else departing from that uniformity of regulation which, as declared by this court in *Kidd v. Pearson*, above cited, it was the object of the commercial clause of the Constitution to secure.

* * * * *

I have read that much along that line with regard to the reserved police powers of the State and want to add a few sentences more, for this reason: That contrary to the statement made here four weeks ago, when I attended, contrary to the statement of the attorney of the Brewers' Association, this legislation is not designed to secure the better enforcement of any specific class of legislation in the States. The whole object of this bill is to subject intoxicating liquors upon coming within the boundary of the State, to the jurisdiction of the State into which they go, so that whatever the policy of the State may be, whether it be prohibition or license or taxation or local option or the dispensary system, foreign liquors brought from other States within the boundary of the State shall be placed upon an equal footing with domestic liquors produced therein, and I go further to say that another statement in the brief of counsel for the Brewers' Association erred when it said that the design of this bill was to effectuate the policy of prohibition in the States and that it was designed to do what Congress never intended to do when it originally passed the Wilson law sixteen years ago.

I happen to have looked that matter up with considerable care. I have here the report which Senator Wilson brought in from the Judiciary Committee of the Senate advocating at that time the passage of

the Wilson law, and that report distinctly says that the design of the legislation was to subject liquors to the jurisdiction of the laws of the various States as soon as they entered the State. Mr. George—and I think I need not say that Senator George of Mississippi had a reputation, and doubtless had it justly, of being one of the ablest lawyers that ever sat in the Senate of the United States—followed with an opinion advocating the passage of the Wilson law in which he said practically the same thing, that the whole design was to restore to the States the reserved police powers of the State which were practically wrested from them summarily and unexpectedly by the Supreme Court decision in the *Leisey v. Hardin* case, and to give to the States absolute and untrammelled control of liquors shipped in from other States as they already had control of liquors produced within the State itself.

Mr. LITTLEFIELD. And did not Senator George say in that report that his opinion was that they still had that right, although the court had held the other way?

Mr. DINWIDDIE. Absolutely.

Mr. LITTLEFIELD. And that inasmuch as the court had so held, he recommended the passage of the legislation that there might not be any legal obstacle to what he believed to be the inherent right of the State?

Mr. DINWIDDIE. Yes, that is absolutely true, and I will revert to that now, if you will permit me. I will say just exactly what Senator George did hold. In the first place, as you all probably know, reading the *Bowman v. Northwestern* decision, Justice Matthews in delivering the opinion of the court in that case, practically hinted—almost said in terms—that the importation of intoxicating liquors from another State doubtless carried with it the right to sell in original, unbroken packages, and he cited *Brown v. Maryland* (12 Wheat., 439), the original fundamental case in which that very principle was upheld, and which has always been maintained in the decisions of the United States Supreme Court.

Doubtless it was with that idea that was thrust out—it is true it was a dictum of the court in the decision of the *Bowman* case, but it was thrust out—and in view of what might happen I take it that in the Fiftieth Congress a bill was introduced substantially the same as the Wilson law in the fifty-first, and Senator George united with a majority of the Judiciary Committee of the Senate against the passage of the law on the ground that the States had the power then under their police powers to handle the entire subject in their own way, and that there was not any necessity for any such legislation. But immediately after the adjournment of the Fiftieth Congress the liquor men opened up the sale of liquor in some of the States in original packages, and the *Leisey v. Hardin* case was brought to the Supreme Court and the court held that the sale of intoxicating liquors imported from another State was constitutional, and that the State law could not abridge it.

Mr. LITTLEFIELD. That is in the original package?

Mr. DINWIDDIE. Yes, in the original package. And then Senator George, as Mr. Littlefield suggests, was face to face with the Wilson bill proposition. He never believed that the States had parted with their reserved police power; at the same time here was the Supreme Court of the land, the court of final jurisdiction, that held against him, that the reserved police powers were not competent in these States to forbid the sale of liquors in the original package when transported

into the States from other States, and so he did the only thing that was left for a practical man to do; he supported legislation that in the preceding Congress did not have the concurrence of his judgment simply because he did not think it was necessary legislation. He believed that the decision of the Supreme Court took away powers from the States which they had always had, and that they ought not to have been wrested from the States in the manner in which they were.

But this was the supreme law of the land after the court had pronounced that opinion, and so Senator George joined with the majority in the Senate and helped pass the Wilson law for the purpose, as he said in his concurring opinion, of giving back to the States powers which they ought to have, which they needed, which were vital to their existence, and which, in his judgment, ought never to have been taken away from them, or, more properly speaking, of removing a barrier to the operation of State laws on this subject.

Just one thing more along that line. I continue the quotation from Mr. Justice Gray on the police powers of the States:

The protection of the safety, the health, the morals, the good order, and the general welfare of the people is the chief end of government. *Salus populi suprema est lex.* The police power is inherent in the States, reserved to them by the Constitution, and necessary to their existence as organized governments. The Constitution of the United States and the laws made in pursuance thereof being the supreme law of the land, all statutes of a State must, of course, give way, so far as they are repugnant to the National Constitution and laws. But an intention is not lightly to be imputed to the framers of the Constitution, or to the Congress of the United States, to subordinate the protection of the safety, health, and morals of the people to the promotion of trade and commerce.

The police power extends to the control and regulation of things which, when used in a lawful and proper manner, are subjects of property and of commerce, and yet may be used so as to be injurious or dangerous to the public safety, the public health, or the public morals. Common experience has shown that the general and unrestricted use of intoxicating liquors tends to produce idleness, disorder, disease, pauperism, and crime.

The power of regulating or prohibiting the manufacture and sale of intoxicating liquors appropriately belongs, as a branch of the police power, to the legislatures of the several States, and can be judiciously and effectively exercised by them alone, according to their views of public policy and local needs; and can not practically, if it can constitutionally, be wielded by Congress as part of a national and uniform system.

The statutes in question were enacted by the State of Iowa in the exercise of its undoubted power to protect its inhabitants against the evils—physical, moral, and social—attending the free use of intoxicating liquors. They are not aimed at interstate commerce; they have no relation to the movement of goods from one State to another, but operate only on intoxicating liquors within the territorial limits of the State; they include all such liquors without discrimination, and do not even mention where they are made or whence they come. They affect commerce much more remotely and indirectly than laws of a State (the validity of which is unquestioned) authorizing the erection of bridges and dams across navigable waters within its limits, which wholly obstruct the course of commerce and navigation; or than quarantine laws, which operate directly upon all ships and merchandise coming into the ports of the State.

If the statutes of a State restricting or prohibiting the sale of intoxicating liquors within its territory are to be held inoperative and void as applied to liquors sent or brought from another State and sold by the importer in what are called "original packages," the consequence must be that an inhabitant of any State may, under the pretext of interstate commerce, and without license or supervision of any public authority, carry or send into and sell in any or all of the other States of the Union intoxicating liquors, of whatever description, in cases or kegs, or even in single bottles or flasks, despite any legislation of those States on the subject, and although his own State should be the only one which had not enacted similar laws. It would require positive and explicit legislation on the part of Congress to convince us that it contemplated or intended such a result.

The decision in the License Cases, 46 U. S., 5 How., 504, by which the court, maintaining these views, unanimously adjudged that a general statute of a State, prohibiting the sale of intoxicating liquors without license from municipal authorities, included liquors brought from another State and sold by the importer in the original barrel or package, should be upheld and followed, because it was made upon full argument and great consideration; because it established a wise and just rule, regarding a most delicate point in our complex system of government, a point always difficult of definition and adjustment, the contact between the paramount commercial power granted to Congress and the inherent police power reserved to the States; because it is in accordance with the usage and practice which have prevailed during the century since the adoption of the Constitution; because it has been accepted and acted on for forty years by Congress, by the State legislatures, by the courts, and by the people, and because to hold otherwise would add nothing to the dignity and supremacy of the powers of Congress, while it would cripple, not to say destroy, the whole control of every State over the sale of intoxicating liquors within its borders.

The silence and inaction of Congress upon the subject, during the long period since the decision in the license cases, appear to us to require the inference that Congress intended that the law should remain as thereby declared by this court, rather than to warrant the presumption that Congress intended that commerce among the States should be free from the indirect effect of such an exercise of the police power for the public safety, as had been adjudged by that decision to be within the constitutional authority of the States.

I have adverted to the police powers of the States and in the extracts from the foregoing judicial opinions have sought to emphasize their importance at this juncture, because it is important to bear in mind that these powers are vitally necessary to the integrity of civil government and to show that they are best exercised by the States themselves. In fact, under our system of government they can be exercised by no other authority. The Congress of the United States has no powers of police. These powers were wisely reserved to the States, and our whole contention is that the latter should be absolutely unimpaird in their full legitimate exercise, and that under its delegated authority to regulate commerce among the States Congress should cooperate with the States to the fullest possible extent in preventing the agencies of interstate commerce from being used in such a way as to break down and practically nullify the legitimate legislation of the States passed in the unquestioned exercise of their police powers.

In the *Bowman v. Northwestern Railway* case, decided March 19, 1888, the Supreme Court held—

That a State can not, for the purpose of protecting its people against the evils of intemperance, enact laws which regulate commerce between its people and those of other States of the Union unless the consent of Congress, express or implied, is first obtained.

In this case also the court made use of the expression in closing its opinion:

It is easier to think that the right of importation from abroad and of transportation from one State to another includes, by necessary implication, the right of the importer to sell in unbroken packages at the place where the transit terminates, for the very purpose and motive of that branch of commerce which consists in transportation is that other and consequent act of commerce which consists in the sale and exchange of the commodities transported. Such, indeed, was the point decided in the case of *Brown v. Maryland* (12 Wheaton, 419) as to foreign commerce, with the express statement in the opinion of Chief Justice Marshall that the conclusion would be the same in the case of commerce among the States.

The liquor people were quick to take advantage of this suggestion although the decision on this point was definitely reserved, and original package saloons were started all over the States of Iowa and Kansas, particularly, and the spectacle of foreign manufacturers and liquor dealers shipping liquors into these States in which the prohibitory

policy prevailed and selling them, either through their own agencies or to citizens of those States whom they could secure to purchase their liquors, for in the original unbroken packages the citizens of Iowa and Kansas were conclusively interdicted from manufacturing and selling such liquors within their States.

I have already adverted to that in the extemporaneous remarks that I made, and it was afterwards carried out in the *Leisey v. Hardin* decision.

Mr. BIRDSALL. I notice that this Littlefield bill does not apply to foreign countries at all; it simply applies between States and Territories.

Mr. DINWIDDIE. I should be very glad to have it made to apply to foreign countries.

Mr. BIRDSALL. I wanted to find out whether that was a mere omission, or whether it was intentional.

Mr. LITTLEFIELD. I can say that it is merely an inadvertence.

Mr. BIRDSALL. And there is no legal objection to making it apply to foreign countries?

Mr. LITTLEFIELD. No.

Mr. DINWIDDIE. I do not think there is. But, pardon me, there is this one thing of a practical nature to be taken into consideration. Our difficulties, of course, are not nearly so great in the matter of importations from foreign countries as from importations from one State to another.

Mr. BIRDSALL. I could not see any legal difficulty there.

Mr. DINWIDDIE. None at all.

The firm of Gus Leisy & Co., of Peoria, Ill., had shipped liquors into the city of Keokuk, Iowa, and the liquors had been seized by the marshal of the city and ex officio constable of the township, and a suit of replevin was brought to secure possession of the confiscated liquors. The case ultimately came before the Supreme Court of the United States, and the decision was reached, not, however, without the qualification of an able dissent by Justices Gray, Harlan, and Brewer, previously referred to, that—

A statute of a State prohibiting the sale of any intoxicating liquors, etc., is, as applied to a sale by the importer and in the original packages or kegs, unbroken and unopened, of such liquors manufactured and brought from another State, unconstitutional and void, as repugnant to the clause of the Constitution granting to Congress the power to regulate commerce with foreign nations and among the several States.

This decision was rendered on behalf of the court by Mr. Justice Fuller, but in this connection, while undoubtedly this reversed the former holding of the court and interpreted the silence of Congress with respect to interstate commerce in any particular commodity to indicate its will that commerce in that article should be free, it became the supreme law and to a very large degree, as undoubtedly recognized by a majority of the court itself and specifically pointed out and deplored in the minority dissent heretofore referred to, it practically rendered useless much of the legislation of the States upon the liquor question, because while the States might prohibit their own citizens from manufacturing and selling intoxicating liquors within the borders of the State, outside manufacturers and dealers could, so long as Congress did not legislate to relieve the situation, send their wares into the State and have them sold in the original packages in utter

defiance of the expressed will of the people of that State, as shown either in constitutional or statutory enactments or both.

As throwing light on the subsequent action of Congress and as also shedding light on the power of the national legislature to enact such a measure as we now advocate before your committee, I desire to call attention to some suggestions which were incorporated in the majority opinion, both in the *Bowman v. Northwestern Transportation Case* and also in the *Leisy v. Hardin Original Package Decision*. Mr. Justice Matthews, in delivering the former, said (found on p. 493 of volume 125, U. S.):

It (a State) can not, *without the consent of Congress, express or implied*, regulate commerce between its people and those of other States of the Union, in order to effect its end, however desirable such a regulation might be.

Throughout the *Leisy* case the court, while constrained to declare the Iowa statute in controversy unconstitutional, nevertheless, seeing the embarrassing, if not intolerable, situation in which such decision would leave the States in respect of the exercise of their police powers as affecting the liquor traffic, used the following expressions, indicating clearly that the desired redress lay in legislation by Congress:

* * * unless placed there by Congressional action (135 U. S., p. 108); hence, inasmuch as interstate commerce consisting in the transportation, purchase, sale, and exchange of commodities is national in its character and must be governed by a uniform system, *so long as Congress does not pass any law to regulate it or allow the States to do so* (ibid., p. 109); * * * can a State, in the absence of legislation on the part of Congress, prohibit either importation from abroad or from a sister State, or when imported, prohibit their sale by the importer? (ibid., p. 110); * * * essentially a regulation of commerce among the States and not sanctioned by the authority, express or implied, by Congress * * * (ibid., p. 119).

The responsibility is upon Congress, so far as the regulation of interstate commerce is concerned, *to remove the restrictions upon the State in dealing with imported articles of trade within its limits*, which have not been mingled with the common mass of property therein, if, in its judgment, the end to be secured justifies and requires such action (ibid., p. 124). * * * In the absence of Congressional permission to do so, the State had no right to interfere by seizure or any other action in the prohibition and sale by the foreign or nonresident importer (ibid., pp. 124-5).

I call attention to the fact that that is an unusual thing, from my reading of court decisions, for a court to point out to the legislature the method by which the court decision could be practically overcome; and yet the court recognizing the tremendous injustice—I think I may use that expression—that would befall the States from the very decision which they felt constrained to render in that case, went so far as to point out the method by which the necessary redress could come to the States.

In harmony with these suggestions from the court (and although the latter may not have been most careful in employing the language to indicate that there was redress from the situation which their decision forced upon the States, I may say in passing that such language on the part of the Supreme Court clearly indicated their judgment that there was a remedy and that it was entirely possible for Congress to administer it), and to remove the impediment to the exercise of the police powers of the several States occasioned by the silence of Congress, the Wilson law, so-called, approved August 8, 1890, was passed (26 Stat., 313, c. 728). That act provided—

that all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such State or Territory, be subject to the operation

and effect of the laws of such State or Territory, enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

The constitutionality of the Wilson law was questioned in the case of *in re Rahrer*, coming up from the circuit court of the United States for the district of Kansas, and its constitutionality was distinctly upheld by the court in an able opinion delivered by Chief Justice Fuller, who himself had delivered the opinion of the court in the *Leisy v. Hardin* case, in which he had also suggested that Congress could apply the remedy which that decision made necessary.

In a subsequent case coming up from the State of South Carolina, under the operations of the dispensary law of that State, the statute of South Carolina, in some of its provisions, was held to be unconstitutional on the ground that they were discriminatory of the products of other States (*Scott v. Donald*, 165 U. S., 58). The gist of the decision in the *Scott v. Donald* case, in which the provisions of the Wilson law were directly involved, is contained in the following excerpt from the opinion of the court, delivered by Mr. Justice Shiras, and found on page 101:

It is sufficient for the present cases to hold, as we do, that when a State recognizes the manufacture, sale, and use of intoxicating liquors as lawful, it can not discriminate against the bringing of such articles in and importing them from other States; that such legislation is void as a hindrance to interstate commerce, and an unjust preference of the products of the enacting State as against similar products of the other States.

The next case to come before the Supreme Court involving the provisions of the Wilson law was that of *Rhodes v. Iowa*, reported in 170 U. S., 412. The decision in this case, except as to the point that the moving of interstate commerce goods from the platform to the freight warehouse is a part of an interstate commerce transportation, turned on the interpretation of the language used by Congress in the Wilson law, and particularly the six words used in that act "arrival in such State or Territory."

The following language, employed by Mr. Justice White in delivering the opinion of the court in the *Rhodes* case, distinctly shows that the decision turned upon the construction of the language which I have just quoted:

The words "shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory" in one sense might be held to mean arrival at the State line; but to so interpret them would necessitate isolating these words from the entire context of the act and would compel a construction destructive of other provisions contained therein. But this would violate the fundamental rule requiring that a law be construed as a whole and not by distorting or magnifying a particular word found in it. It is clearly contemplated that the word "arrival" signified that the goods should actually come into the State, since it is provided that "all fermented, distilled, or other intoxicating liquors or liquids transported into a State or Territory," and this is further accentuated by the other provision, "or remaining therein for use, consumption, sale, or storage therein."

This language makes it impossible in reason to hold that the law intended that the word "arrival" should mean at the State line, since it presupposes the coming of the goods into the State for "use, consumption, sale, or storage." The fair inference from the enumeration of these conditions, which are all embracing, is that the time when they could arise was made the test by which to determine the period when the operation of the State law should attach to goods brought into the State. But to uphold the meaning of the word "arrival," which is necessary to support the State law, as construed below, forces the conclusion that the act of Congress in question authorized State laws to forbid the bringing into the State at all. This fol-

lows from the fact that if arrival means crossing the line, then the act of crossing into the State would be a violation of the State law, and hence necessarily the operation of the law is to forbid crossing the line and to compel remaining beyond the same. Thus, if the construction of the word "arrival" be that which is claimed for it, it must be held that the State statute attached and operated beyond the State line confessedly before the time when it was intended by the act of Congress it should take effect.

Although I intended to revert to this later on, inasmuch as I think of it now I will be glad to take up the question that was raised a moment ago and speak to it a moment, and that is the statement in the court's decision in the case of *Vance v. Vandercook* (165 U. S.) in which it has been held by some that the court has taken the right of a man in one State to import liquor from another State for his personal use to be an inalienable right which can not be abridged by legislation. Now, that statement has practically been made. I don't know whether that is the view that Mr. Brantley takes of the case or not, but at any rate the question which was raised a little while ago leads me to speak to that point, as to whether or not there is anything in the *Vance v. Vandercook* case which indicates the judgment of the Supreme Court of the United States to be that the right to import liquor from one State into another State is an inalienable right and can not be abridged by legislation.

Now, what did the court hold in *Vance v. Vandercook*? I have the volume here, but it is not necessary to refer to it. I can give the exact language. You can readily refer to it in 170 U. S. The court said:

The right of a man to import liquor from another State for his personal use is derived from the Constitution of the United States and does not rest on the grant of State law.

It is derived from the Constitution of the United States. Well, if it is derived from the Constitution of the United States, there must be some article or section of the United States Constitution from which it is derived. What is that section or article of the Federal Constitution which gives to a man in one State the right to import liquor from another State for his personal use and which right is inalienable?

The only section or article in the Federal Constitution that can be pointed to at all as touching the matter is section 8 of article 1, where the right to regulate commerce with foreign nations among the several States and with the Indian tribes is delegated to Congress. Is that not true? If that be true, then this rests absolutely, this so-called right rests absolutely upon that section which delegates to Congress the right to regulate commerce among the States. And the court naturally held, both for that reason and the reason that Mr. Littlefield suggested a little while ago, that it did not rest upon the grant of State law, and under all the decisions we have been discussing here this afternoon naturally they would have to hold that such a right did not rest upon the grant of State law.

Mr. PALMER. The commerce among the States existed before the Constitution was enacted, did it not?

Mr. DINWIDDIE. Yes; and each State absolutely controlled its foreign and domestic commerce before the Constitution of the United States—

Mr. PALMER. And the only reason why that provision was put in the Constitution, as far as we can learn from the debate that was had at the time, was to prevent the States from shutting out things from other States by tariffs or taxes or adverse legislation.

Mr. DINWIDDIE. Absolutely true.

Mr. PALMER. So that when they gave Congress the power to regulate commerce it was not a power that enabled Congress to prohibit commerce altogether, was it?

Mr. DINWIDDIE. Absolutely. Congress, under its plenary power to regulate interstate commerce, has the right to prohibit in certain cases, and it has exercised it. Is that not true, Mr. Palmer?

Mr. BIRDSALL. There is nothing in that provision in article 8 or section 8 that gives me an absolute right to buy whisky or anything else in any other State?

Mr. DINWIDDIE. No; none at all, in my judgment. As long as such a right exists it exists because Congress, and not the States, does not so regulate interstate commerce as to interdict it.

Mr. PALMER. Has not any citizen the right to buy anything anywhere he pleases, independent of the Constitution or any State laws; is not that one of his natural rights?

Mr. DINWIDDIE. No; the courts have held—and I could cite you, if I were to take time, to the cases and pages—the courts have held, however, that all those rights are subject to the general right that every man shall conduct himself so that he shall not in his person and property injure others. The right of the States to regulate or license or tax the liquor traffic in any manner in their discretion, down to the passage of the fourteenth amendment, had been uniformly upheld by the Supreme Court; but when the fourteenth amendment was passed the liquor men thought they had an opportunity to get away from the decisions of the Supreme Court, and Mr. Birdsall probably remembers the first case under that amendment came up from Iowa, the case of *Bartemeyer v. Iowa*, in 18th Wallace, 129, and the Supreme Court held that the fourteenth amendment did not operate in such manner—that it was protection in the pursuit of lawful occupations which that amendment afforded.

Mr. BRANTLEY. Would I interrupt you—

Mr. DINWIDDIE. If you will pardon me a moment, I want to complete this. And then the next case came up from the State of Massachusetts when the Boston Brewing Company brought suit in order to enforce a provision of their charter in which they claimed that they had been divested of the right to manufacture beer, and under the fourteenth amendment they claimed they were being deprived of their vested right; and the Supreme Court held that the fourteenth amendment did not operate to protect a man in the exercise of an unlawful calling or trade.

And then another case from Kansas a year or two later—right here I should say the *Bartemeyer* case was reported in 18th Wallace; the Beer Company case from Massachusetts was reported in 97 U. S., and the *Foster* against Kansas, just mentioned, was reported in 112 U. S., 201, and the court in the last case, after having decided these three cases after the adoption of the fourteenth amendment, and all the same way, holding it did not operate to change the right of the State to control or regulate the traffic within its own bounds, said that this question was no longer open in that court. So a few years later, when the *Mugler v. Kansas* case came up, it was on the point that the plant of *Mugler* in Kansas had been practically confiscated and taken over by the State because he was manufacturing beer without proper authority from the State. They had some of the

ablest counsel in the country in this case, as those men generally do have in the conduct of these cases. They had Joseph H. Choate and Senator Vest, of Missouri, as counsel for the appellants in this case.

The court held it was not a natural right of a citizen to manufacture liquors, even for his own personal use. Counsel pressed with great force upon the court the fact that the simple manufacture of this liquor did not injure anybody else; it was not like the manufacture of gunpowder or the conduct of a fertilizer plant. They laid great stress on the fact that this man might use that plant to manufacture only for his own personal use, and yet the court said it was not the natural right of a citizen of the United States to manufacture liquor for his own personal use. Now it seems to me that there is a good deal of light shed by this decision upon the question, also as to whether it is the natural right of a man to acquire intoxicating liquors by importation if Congress makes it possible for State jurisdiction to attach to such liquors when they come within the State.

The courts have held in all these cases, when the cases have come up (even when they were constrained to pass against the validity of the State laws), the courts have practically said that the object of local option under police powers may be impaired and rendered nugatory if liquors could be shipped in from the outside or if liquors could be manufactured in the State and exported into another State. This last was the exact point decided in the case of Kidd against Pearson, 128 U. S., and in the Mugler case, as I said, it was decided that a man could not manufacture intoxicating liquors even for his own personal use.

Mr. STERLING. Do you reconcile those cases with the case of Vance against Vandercook, or do you say they conflict at all.

Mr. DINWIDDIE. I do not think they conflict. I think the case of Vance v. Vandercook was decided in view of the court's holding in the Rhodes case. They held in the Rhodes case that under the language of the Wilson law the interstate commerce character of liquors did not cease until the goods had been delivered to the consignee, and yet the statute of South Carolina was attempting to attach to those liquors before delivery had been made to the consignee.

Mr. LITTLEFIELD. The case of Vance against Vandercook was a case where the liquors were to be delivered to a person for his personal use, and hence the use of the language in the decision in that case, "personal use."

Mr. DINWIDDIE. Yes; and they construed that in view of the previous decision in the Rhodes case.

Mr. LITTLEFIELD. If we passed this bill it would not be of any use unless the State prohibited the personal use of liquors.

Mr. DINWIDDIE. To make this Littlefield bill any good?

Mr. LITTLEFIELD. Yes; you would have to have a police regulation in the State.

Mr. DINWIDDIE. Yes; to attempt to do that.

Mr. LITTLEFIELD. Where is there any State that has any such regulation as that?

Mr. DINWIDDIE. There is none that I know of.

Mr. LITTLEFIELD. Then the next thing you would do would be to get the State to pass such a law as this to make this bill any good—as far as personal use goes, I mean?

Mr. DINWIDDIE. So far as the personal-use idea goes, yes; but that

leads me to another thing. It has been contended in some quarters that this personal-use amendment is necessary in order to make this statute, the Littlefield bill or this statute, if it is enacted into law, constitutional, and I want to say a word or two on that line.

Mr. LITTLEFIELD. That is an amendment restricting it as to personal use.

Mr. DINWIDDIE. Yes; an amendment prohibiting the State from interfering with liquors imported for personal use. Now that can not be. In the first place, it seems hardly necessary to refer to it in a committee that knows vastly more about the law than I do, but the point is this:

Grant, for the sake of argument, that it may be unconstitutional—which I do not believe—for a State, even after this bill is passed, to prohibit a man from importing liquor into his State for his own personal use; if a State attempts to do that after this bill is passed I submit to the committee it will not be this bill that is unconstitutional. It will be the State legislation that is passed by such a commonwealth after this bill passes. Is that not true? The very fact that this amendment is not on the Littlefield bill when it becomes a law will not make this at all repugnant to the Constitution of the United States, but if it is constitutional and it is an alienable right for a man in a State to import liquor for personal use from another State, I submit that it is the legislation by the State attempting to enact it which will fall as being repugnant to the Constitution of the United States.

Mr. LITTLEFIELD. That is to say this bill simply attempts to remove generally the interstate-commerce inhibition.

Mr. DINWIDDIE. Exactly.

Mr. LITTLEFIELD. And proceeds on the assumption that every State will exercise its legislative power in a constitutional manner?

Mr. DINWIDDIE. Yes.

Mr. LITTLEFIELD. And does not single out any feature of State legislation for permission or authorization?

Mr. DINWIDDIE. Not at all.

Mr. LITTLEFIELD. But is absolutely general in its character, and if the State does undertake to exercise unconstitutional powers the legislation of the State is what falls?

Mr. DINWIDDIE. Exactly so; isn't that correct?

Mr. LITTLEFIELD. I haven't any doubt about it.

Mr. DINWIDDIE. I haven't any doubt about it either.

Mr. PALMER. That settles it then.

Mr. BRANTLEY. If it would be unconstitutional for the State to prevent the importation of liquor for personal use or otherwise, what would you accomplish at all by the passage of this bill?

Mr. DINWIDDIE. Well, you have heard Judge Smith, you have heard Mr. Williams, of Mississippi, speak of the difficulties.

Mr. BRANTLEY. To eliminate your second section about C. O. D. deliveries and take your first section, what do you accomplish by that unless you could enable a State to prohibit the importation of liquor? It can now prevent the sale of liquor.

Mr. DINWIDDIE. After it gets to the consignee—

Mr. BRANTLEY. If you prevent the consignee from receiving it you prevent its importation, and is not that what you are seeking to do under the first section, or at least give the States authority to do that?

Mr. DINWIDDIE. I will answer your question in this way: What we

seek to do is to give to the States the right to let their lawful legislation attach to liquors upon their entrance into the State before and after delivery to the consignee.

Mr. BRANTLEY. I know that is the language——

Mr. DINWIDDIE. That would be the effect if it was passed——

Mr. BRANTLEY (continuing). But now what particular thing do you want the State to do?

Mr. DINWIDDIE. I want the State to have absolute plenary power, as they formerly had before the *Leisy v. Hardin* decision, to regulate the liquor traffic within their States in their own way.

Mr. BRANTLEY. Do you know of any power that a State would have upon the passage of this law that it has not now except the right to prevent the importation?

Mr. DINWIDDIE. I do not know that it has, and I am perfectly frank to say before the committee—I believe like Mr. Williams in being entirely frank—I do not know any reason why the States, if it can be constitutionally done and they want to do it, I do not know of a State to-day that attempts to do it, but I do not know of any reason why they should be prohibited from exercising that power if they choose to do it.

Mr. BRANTLEY. I was not discussing that, but I wanted you to be candid enough to tell us what you wanted the State to do under the proposition of the first section of the Littlefield bill, and if there is anything it could do then that it can not do now except to prevent the importation of liquor into the State.

Mr. LITTLEFIELD. What was your question?

Mr. BRANTLEY. My question was whether under the first section of the Littlefield bill there was any power conferred except the power to prohibit the importation of liquor?

Mr. LITTLEFIELD. Yes; I suppose that is true, that under the law as it stood after the *Leisy v. Hardin* case the sale in the original package was the essential feature of the importation proposition. I suppose that is true, is it not?

Mr. DINWIDDIE. There is no doubt about that. Now, the Wilson bill deprived the liquor of that essential attribute of interstate commerce; but State law can not attach to the liquor under the Wilson law, as interpreted in the *Rhodes* case, until the original package reaches the hands of the consignee; and when it has reached the hands of the consignee then the law operates, which it did not do before the Wilson law. Now, this bill, if passed, will subject the liquor to the State legislation as soon as it arrives within the geographical limits of the State. For instance, if it was intended for unlawful sale it could be seized before it reaches the consignee.

Mr. LITTLEFIELD. In other words, you could prevent it coming in?

Mr. DINWIDDIE. You can prevent it from coming in now for all legal purposes under the Wilson law when you deprive an interstate shipment of its essential attributes.

Mr. LITTLEFIELD. The Supreme Court called that an incident.

Mr. DINWIDDIE. You practically deprive the whole transaction of any interstate commerce value. This does go further, to be sure, and attaches to the original package the moment it reaches the geographical limits of the State.

Mr. STERLING. Then, as a matter of fact, the only thing that is accom-

plished by the bill is that you can this way reach liquor shipped in for personal use. You can reach all other cases at present.

Mr. LITTLEFIELD. No, I don't think so, for this reason: Suppose a man ships in a barrel of liquor, and has shipped it in to be delivered to a regular dealer in liquor. Under the Wilson law you would have to wait until that barrel of liquor reached the place of business of the man operating his saloon, for instance, and when it reached his place of business and was delivered to him then it would be subject to seizure and confiscation, and then he would be subject to prosecution under the law of the State for selling it or for keeping it with intent to sell. Now, if this bill becomes a law, you can reach that same barrel of liquor before it reaches the consignee.

Mr. STERLING. Is there any advantage in that?

Mr. LITTLEFIELD. Yes, a tremendous advantage. In my own State, speaking from my own practical experience, one of the most effective instruments in the enforcement of the prohibitory law in Maine is the power to seize the liquor when it reaches the railroad station or when it is in the hands of the carrier—that is, when it comes along and before it reaches the hands of the consignee. Of course, that can not be done, that is, legally done, to-day, but it is one of the most important features in the successful enforcement of the law in my State. Do I make myself clear?

Mr. STERLING. Yes, I see the point, but it goes this much farther than the suggestion I make. I have been considering the only thing gained by it would be that you could reach cases of liquor shipped in for personal use. By your explanation there is this much in addition: That they can seize the liquor sooner than they can under the Wilson law as it is now.

Mr. DINWIDDIE. Undoubtedly.

Mr. STERLING. So in effect the only thing you can do under this bill that you can not do under the Wilson law—I mean as to the practical operation of the liquor business in any State—is to cut out the right of a person shipping it in for personal use.

Mr. LITTLEFIELD. In addition to the element of seizure.

Mr. PALMER. You could not cut out that right in any State up to that point; you would have to get some more legislation.

Mr. STERLING. I see the point you make, Mr. Littlefield; that goes simply to being able to put into practical effect the laws of the State, whatever they may be.

Mr. DINWIDDIE. Before the State loses sight of the liquor.

Mr. STERLING. It makes it more efficient.

Mr. LITTLEFIELD. Yes.

Mr. DINWIDDIE. I may say in this connection two things. In the first place I want to repudiate a suggestion made here from time to time by anybody that has spoken against this measure, and that is that we are coming up here and asking Congress to help us enforce our State legislation. Now that is absolutely not true.

Mr. STERLING. Does not that go right to that question; does not the suggestion, the point Mr. Littlefield makes of simply enabling the States to enforce their local laws, go to that point?

Mr. DINWIDDIE. I say the legislation is not to help them. We are simply asking Congress to remove a bar to the successful enforcement of our legislation, and after Congress removes the impediment it is up

to us to enforce our legislation or take the evil consequences of non-enforcement. But the very fact—and I want to answer the statement made on the other side—the very fact that we are here asking for this legislation, the very fact, as has been said of many States, that we have tried and have succeeded in convicting men for violation of State statutes on the liquor question in these various States, and then find ourselves unable to secure permanent conviction of those men when they plead interstate commerce, shows that the States are actually enforcing their legislation upon this subject, and that they are not wholly dilatory.

I do not mean to say that there are not exceptions, but I mean to say that as a general thing the States are not “laying down” on the job and asking Congress to do something for them which they refuse or fail to do themselves.

Mr. SMITH, of Kentucky. Is not this bill tantamount to a bill removing liquors from interstate commerce—that is, declaring that they shall not constitute articles of interstate commerce; is not that the substantial effect of this?

Mr. DINWIDDIE. I will tell you, Mr. Smith, if you will permit me. If I have 140 U. S., I will tell you. I do not think anybody can employ language that is more apt and goes more directly to the heart of the matter than Chief Justice Fuller himself employed in the *Rahrer* case, when he decided the constitutionality of the Wilson law, and then goes just one step farther. He says:

No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.

Mr. Littlefield was right a moment ago when he said—and I could go from *Brown v. Maryland*, the great controlling case which was decided by Chief Justice Marshall in 1827, with reference to the right of an importer to sell the imported article in the original unbroken package, without any State interference, from that time down. Chief Justice Marshall held in the leading case of *Brown against Maryland*, and it has been reiterated all through these years by the courts, that the sale of an imported article was an essential part of interstate commerce and that the right to sell an imported article was an inseparable accessory of the right to import.

Mr. LITTLEFIELD. That is, it was interstate commerce.

Mr. DINWIDDIE. That is, it was interstate commerce and the States could not interfere with it, and that was held clear up and in fact furnished the basis for the judgment of the court in the *Leisy v. Hardin* case. That was the gist of the *Leisy v. Hardin* case—that a man could import under the decision of the *Bowman v. Chicago and Northwestern Railroad* case and then they went farther and said if the man could import a package of liquor from another State he had the necessary accessory right, essential right, the court held and stated, to sell it in the original package, and that was the very point decided in the *Leisy* case.

Now, then, the court held that Congress by the Wilson law divested interstate commerce in shipments of liquor of that important element of sale, and our simple contention is that under the statement which Chief Justice Fuller made in delivering that opinion, which decided the constitutionality of the Wilson law, if Congress can divest an im-

ported package of an essential element that had always been recognized as such it can go further and divest it of its interstate commerce character after it crosses the State line.

Mr. SMITH. It would not be interstate commerce at all then?

Mr. DINWIDDIE. Exactly not, because it is then made a domestic product, and this is exactly what is done here.

Mr. BRANTLEY. The question I wanted to ask you is this: If that line of reasoning is true could not Congress divest the article of its interstate commerce character at the place it was offered for shipment, although it was merchandise offered for interstate shipment, and the state would assume the regulation of what was actually interstate commerce; where would you draw the line?

Mr. DINWIDDIE. Oh, no; I will answer that this way very readily: because a State can not exercise extra territorial jurisdiction. A law of the State of Ohio can not operate in the State of Pennsylvania, but Congress, in my judgment, according to this decision—and there has been no pronouncement in any other case that changes that decision of the court or gives color to the idea that such an act would not be declared constitutional—the Congress can divest it at an earlier period of time than ordinarily. What has been the rule all through the years as to when interstate commerce in an article ceased? Not at the delivery to the consignee, the court held right along—

Mr. LITTLEFIELD. You mean prior to the Wilson law—

Mr. DINWIDDIE. I am speaking of interstate commerce generally, Mr. Littlefield, not when it was delivered to the consignee, but when the importer had so acted upon the imported article that it had become commingled with the mass of property in the State. I know that statement has been ridiculed by some of the justices of the Supreme Court bench, but there must have been a time—and they have always held that from the first sale by the importer or some other action by him has made it clear that it was then a part of the mass of property within the State, and up to that time the States could not interfere.

Now, with reference to intoxicating liquor, it was so decided in the Leisy case, that the State could not interfere until after sale by the importer of the original package, but Congress came in by the Wilson law and divested intoxicating liquor of its interstate character, made it a class by itself, and divested it of its interstate-commerce character so far as to enable State jurisdiction to attach after delivery to the consignee, and so as to prevent sale.

Mr. LITTLEFIELD. So far as the consignee is concerned it practically destroyed it.

Mr. DINWIDDIE. Yes.

Mr. STERLING. Do you think if a man should under this law personally take a bottle of liquor in his pocket or valise into a prohibition State that the State could by a law seize that bottle of liquor?

Mr. LITTLEFIELD. They have such a law in the State of Iowa right now.

Mr. DINWIDDIE. Well, it would subject liquor coming within the State—

Mr. LITTLEFIELD. They go that far in Kansas.

Mr. DINWIDDIE. I was interrupted a little while ago when I was going on to make this admission. Now, what is the object of all anti-saloon legislation, regulation, prohibition, dispensary? On its face it can not be defended on any other ground than that it is to decrease

the consumption of intoxicating liquors. If that is the case why don't the States pass legislation directly prohibiting people from using intoxicating liquors? Why, you could not enforce that legislation because you could not prove people guilty of violating the law as you can prove them guilty of violating laws against selling intoxicating liquors.

In Ohio we are not a prohibition State, but we have a good deal of local-option territory in the State, and that legislation is aimed at the decrease of the consumption of intoxicating liquors. And why don't we go at it directly? You could not prove one out of a hundred cases if the law were directed against the drinking of intoxicating liquors. We get at it by trying to reduce the sales. I have not the slightest hesitancy in admitting that the object would be the same, and it is the same. Now, then, what is the practical effect? You raise the question of what is the practical effect in regard to the importation of liquor for personal use after this bill becomes a law. Take, for instance, Maine or Kansas or North Dakota. Liquor is consigned to a man in the State of Maine (which State does not forbid the personal use of liquor); it would simply be delivered to that consignee and unless the authorities in the State of Maine had reason to believe he was importing it for unlawful use. Is that not so?

Mr. LITTLEFIELD. To-day a man may have a wagon load of liquor shipped to him and if it is seized it is practically impossible to convict him if he claims it is for his personal use. There is no law in my State to-day that undertakes to prevent a man from purchasing liquor for his own personal use, and there has never been any suggestion of legislation of that kind, I may say.

Mr. DINWIDDIE. This bears on this point:

It is competent for Congress under the grant of power to regulate commerce among the States to determine when a subject of that commerce shall become amenable to the law of the State in which the transit ends.

That is 43d Federal Reporter, 763. That is in direct harmony with the pronouncement of the Supreme Court in *re Rahrer*, in 140 U. S., and has never been overruled.

May I call the attention of the committee to the fact that we already have a statute of this kind which has been passed on and held constitutional.

I have here the Revised Statutes. I call attention to section 4280. I would also direct attention to 4278 and 4279. These sections refer to the transportation of nitroglycerin and similar products under the acts of Congress. It tells how they shall be boxed and shipped, and so on—4278 and 4279; but now, coming to 4280, it reads:

The two preceding sections shall not be so construed as to prevent any State, Territory, district, city, or town within the United States from regulating or prohibiting the traffic in or transportation of those substances between persons or places lying or being wholly within their respective territorial limits, or from prohibiting the introduction thereof into such limits for sale, use, or consumption therein.

Mr. PALMER. Under that law if a town happened to be situated on the line of a railroad, they could stop dynamite or nitroglycerin from being carried through the town.

Mr. BRANTLEY. Do you put liquor in the same class with diseased cattle and nitroglycerin?

Mr. DINWIDDIE. Not diseased cattle; diseased cattle are not articles

of commerce. It has always been competent for a State to destroy and prohibit the sale of diseased cattle.

Mr. BRANTLEY. Does the Congress levy a tax upon dealers in nitroglycerin?

Mr. DINWIDDIE. In the States?

Mr. BRANTLEY. Does the United States recognize dealing in nitroglycerin as a legitimate article of commerce, and tax the dealers?

Mr. DINWIDDIE. I do not see that that has any bearing, but I would answer yes as to the first part of your question; I think not as to the tax.

Mr. BRANTLEY. It recognizes it as an article that might be productive of loss of life by explosion.

Mr. DINWIDDIE. It is recognized as an article of commerce, and the means for transporting it are provided by that act of Congress.

Mr. BIRDSALL. I suppose that would be upon the theory that there is danger in the transportation itself?

Mr. DINWIDDIE. Yes, certainly; but as to the question of whether they tax it, I do not see that that has any bearing because the Federal tax on liquors has always been construed not to be a license to sell, and to confer no authority.

Mr. BRANTLEY. But it is a recognition that whisky is a legitimate article of commerce.

Mr. DINWIDDIE. I do not see that; it is simply a revenue measure.

Mr. SMITH, of Kentucky. But Congress would not tax anything as a revenue producer that was not a legitimate article of commerce.

Mr. LITTLEFIELD. It taxed national-bank currency out of existence on the ground it was not legitimate.

Mr. SMITH. That was not for revenue.

Mr. LITTLEFIELD. But it was exercising that power.

Mr. SMITH. It was a very false application of the power, though.

Mr. LITTLEFIELD. I agree with you. But the statute says that the tax on liquors shall not authorize the sale of the liquor anywhere. The tax on its face has the express statement that it does not license them to sell.

Mr. SMITH. I understand it has no power in reality to license.

Mr. LITTLEFIELD. Not only has no power, but it does not undertake to do so.

Mr. SMITH. I understand, but it is a recognition of the business as a legitimate business.

Mr. LITTLEFIELD. Nobody sells it without a Government tax receipt, because he has to pay that tax, but the Government recognizes it as a traffic that can more probably bear the burden the Government places on it, and so that is the reason it is differentiated, for instance, from a barrel of flour, which the Government would also have a right to tax.

Mr. DINWIDDIE. I have some further extracts from the case of *in re Rahrer*, in which I think the court absolutely pointed to the legitimacy and constitutionality of this character of legislation by Congress, and the decision of the Supreme Court in the *Champion Lottery* case, which goes to the very point raised by Mr. Palmer a little while ago with reference to whether the right to regulate interstate commerce carried with it the right to prohibit, but I do not care to inflict very much more upon the committee, and I would simply like to call attention to those decisions. Justice Harlan in that *Champion Lottery*

case went so far as to show by a direct reference to three or four or five statutes of the United States that the power of the Congress under its delegated authority to regulate commerce had been invoked time and time again to prohibit interstate commerce.

Mr. PALMER. Where is that case?

Mr. DINWIDDIE. That is reported in 188 U. S.; the title of the case is *Champion v. Ames*, page 321.

The CHAIRMAN. The court in that case stated that he expressly limited the doctrine of that case to the particular facts in the case before him.

Mr. DINWIDDIE. Yes, and I do not know of any case before the Supreme Court in which that has not practically been done. In nearly all of these intoxicating liquor cases the court has said that, and particularly with reference to this conflict between State authority and Federal authority. All these cases are individual cases, and are decided under the law and Constitution upon the facts in each particular case.

Mr. LITTLEFIELD. I was going to suggest—I think you have probably very fully covered the general propositions—would it answer your purpose if you would file an additional statement and have it printed in the Record?

The CHAIRMAN. Somebody suggested you be allowed a month. Would you prefer that?

Mr. DINWIDDIE. No, I would not. I prefer action by the committee in connection with this legislation. I do not want to lug in a lot of extraneous and improper matter, but inasmuch as some things have been adverted to by the opponents of the measure, I want in connection with the legal argument which I shall prepare, with your courtesy, as Mr. Littlefield suggests, to incorporate rather brief statements along one or two other lines, not because they belong here so much, but because our German-American friends have put in so much that really does not belong before this committee, and yet which might have an influence, that I think some of those statements ought to be met. In the first place, the action of life insurance companies concerning the temperance or total abstinence habits of their insured and prospective insurers; the statement was made that the census of the United States showed that men that drank were better risks for insurance companies—

Mr. LITTLEFIELD. I can tell them one company that does not act on that hypothesis; that is the Equitable of New York.

Mr. DINWIDDIE. Some statements were made with reference to the ill effects of the Sunday closing in St. Louis, which has become rather famous. I have statistics showing that there has been a marked diminution of crime because of the Sunday closing. I would like to incorporate that and one or two other similar facts that bear directly on the remarks that have been made before the committee if you will allow me that privilege.

The CHAIRMAN. Yes.

Mr. DINWIDDIE. I was entirely willing to be subjected to the questionings of the committee, although it necessarily interfered somewhat with the continuity of my argument. I desire to call attention to the fact that it was the specific language which Congress employed in the Wilson law, under which the Supreme Court was constrained to hold that the State laws did not attach to liquors imported from other

States until after their delivery to the consignee. I have already cited the exact language employed by the court in rendering that decision. In the same connection I call attention to the fact that when the general power of Congress to pass such a law subjecting a class of merchandise to the jurisdiction of State laws upon their arrival within the State was before the court, in the case of *in re Rahrer*, the validity of the statute was upheld by an undivided court, and in answer to some of the Constitutional objections which have been urged against this proposed legislation I shall call attention to the very definite and clear and, it seems to me, conclusive statements of Chief Justice Fuller in delivering the latter decision.

I shall now advert to the various objections that have been raised to the Littlefield bill and the Hepburn-Dolliver bill of which it is the successor. So nearly as they can be put in definite form, the supposed constitutional objections to this measure are the following: First, that the passage of the law would give extraterritorial effect to such legislation of the States as sought to bring within their jurisdiction imported original packages before their delivery to the consignee; second, that the passage of the bill would be tantamount to a delegation of power vested solely in Congress by the Constitution—to “regulate commerce among the several States;” third, that the passage of the bill, together with the operations of State laws designed to act on interstate shipment of liquors, would amount to concurrent legislation by the Federal Government and the several States upon a subject the control of which, by the terms of the Constitution, was granted exclusively to Congress; fourth, that the power of Congress to regulate interstate commerce does not include the power to prohibit; fifth, that the right to import intoxicating liquors from another State for the personal use of the consignee is a right secured by the Constitution of the United States and incapable of being destroyed by legislation.

No clearer nor more conclusive answer to the first two propositions, as well as to the third by necessary implication, is possible than the opinion of the Supreme Court in the *Rahrer* case (140 U. S., 561-564) as handed down by Chief Justice Fuller, and from which I quote verbatim:

By the adoption of the Constitution the ability of the several States to act upon the matter solely in accordance with their own will was extinguished, and the legislative will of the General Government substituted. No affirmative guaranty was thereby given to any State of the right to demand as between it and the others what it could not have obtained before, while the object was undoubtedly sought to be obtained of preventing commercial regulations partial in their character or contrary to the common interests. And the magnificent growth and prosperity of the country attest the success which has attended the accomplishment of that object. But this furnishes no support to the position that Congress could not, in the exercise of the discretion reposed in it, concluding that the common interests did not require entire freedom in the traffic in ardent spirits, enact the law in question. In so doing Congress has not attempted to delegate the power to regulate commerce, or to exercise any power reserved to the States, or to grant a power not possessed by the States, or to adopt State laws. It has taken its own course and made its own regulation, applying to these subjects of interstate commerce one common rule, whose uniformity is not affected by variations in State laws in dealing with such property.

The principle upon which local-option laws, so called, have been sustained is that while the legislature can not delegate its power to make a law, it can make a law which leaves it to municipalities or the people to determine some fact or state of things upon which the action of the law may depend; but we do not rest the validity of the act of Congress on this analogy. The power over interstate commerce is too vital to the integrity of the nation to be qualified by any refinement of reasoning. The power to regulate is solely in the General Government, and it is an essential

part of that regulation to prescribe the regular means for accomplishing the introduction and incorporation of articles into and with the mass of property in the country or State. (12 Wheat., 448.)

No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.

The differences of opinion which have existed in this tribunal in many leading cases upon this subject have arisen, not from a denial of the power of Congress, when exercised, but upon the question whether the inaction of Congress was in itself equivalent to the affirmative interposition of a bar to the operation of an undisputed power possessed by the States.

We recall no decision giving color to the idea that when Congress acted its action would be less potent than when it kept silent.

The framers of the Constitution never intended that the legislative power of the nation shall find itself incapable of disposing of a subject-matter specifically committed to its charge.

* * * * *

Congress did not use terms of permission to the State to act, but simply removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.

* * * * *

This is not the case of a law enacted in the unauthorized exercise of a power exclusively confided to Congress, but of a law which it was competent for the State to pass, but which could not operate upon articles occupying a certain situation until the passage of the act of Congress.

That act in terms removed the obstacle, and we perceive no adequate ground for adjudging that a reenactment of the State law was required before it can have the effect upon imported which it had always had upon domestic property.

Jurisdiction attached, not in virtue of the law of Congress, but because the effect of the latter was to place the property where jurisdiction could attach.

The opponents of this measure claim what its advocates freely admit and what every lawyer knows, and of which even laymen like myself are cognizant, that Congress can not delegate its own powers nor enlarge those of a State, nor give to State laws extraterritorial jurisdiction. None of these things are attempted by the bill under consideration. The effect, as the Chief Justice has so well said, will be "simply to remove an impediment to the enforcement of the State laws in respect to imported packages in their original condition created by the absence of a specific utterance" on the part of Congress, and thus place the imported property in such a position that State jurisdiction can attach.

Were the quotation from the opinion in the *Rahrer* case just cited not a sufficient answer to the objections just referred to, ample precedent is found in numerous other exercises of exclusive power similarly vested in Congress by the Constitution, as, for example, in the act approved August 17, 1789.

It has been said that the act of August 7, 1789, acknowledges a concurrent power in the States to regulate the conduct of pilots, and hence is inferred an admission of their concurrent right with Congress to regulate commerce with foreign nations and among the States. But this inference is not, we think, justified by the fact. Although Congress can not enable a State to legislate, Congress may adopt the provisions of a State on any subject. When the Government was brought into existence it found a system for the regulation of its pilots in force in every State. The act which has been mentioned adopts this system and gives it the same validity as if its provisions had been specially made by Congress. But the act, it may be said, is prospective also, and the adoption of laws to be made in the future presupposes the right in the maker to legislate on the subject. The acknowledged power of a State to regulate its police, its domestic trade, and to govern its own citizens may enable it to legislate on the subject to a considerable extent; and the adoption of its system by Congress,

and the application of it to the whole subject of commerce does not seem to the court to imply a right in the States to apply it of their own authority. But the adoption of the State system being temporary, being only until further legislative provision shall be made by Congress, shows conclusively an opinion that Congress could control the whole subject, and might adopt the system of the States or provide one of its own.

The States have absolutely plenary power over their purely internal affairs. At the same time, under the Constitution and decisions of the Supreme Court, they are absolutely interdicted from interference with interstate commerce. On the other hand, Congress, while it can neither authorize nor forbid nor otherwise regulate the purely internal commerce of a State, has absolutely plenary power over interstate commerce. This includes the regulation of the subjects and means of interstate commerce, as will be universally conceded. And it also embraces the power to determine when articles of interstate commerce shall be divested of that character and become subject to the laws of the States; or, in other words, to use the language of in *re Vliet*, 43 Fed. Rept., 763: "To determine when a subject of that commerce shall become amenable to the law of the State in which the transit ends." This decision has never been overruled, and, in fact, the decision in the *Rahrer* case was a conclusive affirmance of the doctrine in the case of *Vliet*, just quoted.

Even a cursory examination of the leading interstate-commerce cases—*Gibbons v. Ogden* (9 Wheaton, 1) and *Brown v. Maryland* (12 Wheaton, 419), as well as later cases—shows conclusively that the power of Congress to regulate interstate and foreign commerce is plenary, and that Congress itself is the sole judge as to the manner in which it shall be exercised, subject only to the actual prohibitions that are placed upon it by the Constitution of the United States, and there are no such prohibitions so far as this bill is concerned. The following quotation bearing on this specific point is from the celebrated opinion of Chief Justice Marshall in the case of *Gibbons v. Ogden*:

Congress shall have power to regulate commerce among the several States and with foreign nations and with the Indian tribes. The subject to be regulated is commerce, and our Constitution being, as so ably said at the bar, one of enumeration and not of definition, to ascertain the extent of the power it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term applicable to many objects to one of its significations. Commerce undoubtedly is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse.

We are now arrived at the inquiry, What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than those that are prescribed in the Constitution.

These are expressed in plain terms and do not affect the questions which arise in this case or which have been discussed at the bar. If, as has been always understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.

The wisdom and the discretion of Congress, their identity with people, and the influence their constituents possess at elections are in this, as in many other instances—as, for example, in declaring war—the sole restrictions on which they have relied to secure them from its abuse. They are the restrictions on which the people must often rely solely in all representative governments.

In this direct connection it may be well to repeat a doctrine frequently announced by the Supreme Court, which was originally laid down in the *Gibbons v. Ogden* case, known and quoted as the leading interstate-commerce case, decided by Chief Justice Marshall, wherein it has been held that "the power to regulate interstate and foreign commerce is full, complete, and absolute in Congress, subject to no limitations other than are prescribed by the Constitution." There are no limitations in the Constitution that forbid Congress to pass a law divesting articles, to use the language of the Supreme Court itself, of their interstate-commerce character "at an earlier period of time than would otherwise be the case." But in order to dispel all doubt upon this subject I refer to a very recent decision of the Supreme Court in the *Champion Lottery* case, which was known as *Champion v. Ames*, and reported in 188 U. S., 321.

That regulation may sometimes take the form or have the effect of prohibition is also illustrated in the case of *In re Rahrer* (140 U. S., 545). In *Mugler v. Kansas* (123 U. S., 623) it was adjudged that State legislation prohibiting the manufacture of spirituous, malt, vinous, fermented, or other intoxicating liquors within the limits of the State, to be there sold or bartered for general use as a beverage, does not necessarily infringe any right, privilege, or immunity secured by the Constitution of the United States or by the amendments thereto. Subsequently, in *Bowman v. Chicago, etc., Railway Company* (125 U. S., 465), this court held that ardent spirits, distilled liquors, ale, and beer were subjects of exchange, barter, and traffic, and were so recognized by the usages of the commercial world, as well as by the laws of Congress and the decisions of the courts. In *Leisy v. Hardin* (135 U. S., 100) the court again held that spirituous liquors were recognized articles of commerce, and declared a statute of Iowa prohibiting the sale within its limits of any intoxicating liquors, except for pharmaceutical, medicinal, chemical, or sacramental purposes, under a State license, to be repugnant to the commerce clause of the Constitution, if applied to the sale within the State by the importer, in the original unbroken packages of such liquors manufactured in and brought from another State.

And in determining that case the court said that "whether a State could prohibit the sale within its limits, in original, unbroken packages, of ardent spirits, distilled liquors, ale, and beer imported from another State, this court said that they were recognized by the laws of Congress as well as by the commercial world 'as subjects of exchange, barter, and traffic,' and that whatever our individual views may be as to the deleterious or dangerous qualities of particular articles, we can not hold that any articles which Congress recognized as subjects of commerce are not such." (*Leisy v. Hardin*, 135 U. S., 100, 110, 125.)

Then followed the passage by Congress of the act of August 8, 1890 (26 Stat., 313, c. 728), providing "that all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise." That act was sustained in the *Rahrer* case as a valid exercise of the power of Congress to regulate commerce among the States.

In *Rhodes v. Iowa* (170 U. S., 412, 426), that statute—all of its provisions being regarded—was held as not causing the power of the State to attach to an interstate-commerce shipment of intoxicating liquors "while the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery there to the consignee."

Thus under its power to regulate interstate commerce, as involved in the transportation, in original packages, of ardent spirits from one State to another, Congress, by the necessary effect of the act of 1890, made it impossible to transport such packages to places within a prohibitory State and there dispose of their contents by sale, although it had been previously held that ardent spirits were recognized articles of commerce, and, until Congress otherwise provided, could be imported into a State and sold in the original packages despite the will of the State. If at the time of the passage of the act of 1890 all the States had enacted liquor laws prohibiting the sale of intoxicating liquors within their respective limits, then the act would have had

the necessary effect to exclude ardent spirits altogether from commerce among the States, for no one would ship, for purposes of sale, packages containing such spirits to points within any State that forbade their sale at any time or place, even in unbroken packages, and, in addition, provided for the seizure and forfeiture of such packages. So that we have in the *Rahrer* case a recognition of the principle that the power of Congress to regulate interstate commerce may sometimes be exerted with the effect of excluding particular articles from such commerce.

But there is a further confirmation of our proposition that it is competent for Congress to pass the Littlefield bill now under consideration. Sections 4278, 4279, and 4280, United States Revised Statutes, refer to the transportation of nitroglycerin and other similar substances by the agents of interstate commerce. The first two sections prescribe the manner of the transportation required by the Federal statute. Section 4280 specifically provides that—

The two preceding sections shall not be so construed as to prevent any State, Territory, district, city, or town within the United States from regulating or from prohibiting the traffic in or transportation of those substances, between persons or places lying or being within their respective territorial limits, or from prohibiting the introduction thereof into such limits, for sale, use, or consumption therein. (Act July 3, 1866, c. 162, par. 5, 14 Stat., 82.)

Being unable to overcome the force and direct application to the bill under consideration of the doctrine that the power of Congress is plenary and that it can regulate interstate and foreign commerce according to its discretion, subject only to such limitations as are found in the Constitution itself, some of the opponents of this bill admit the accurateness of that statement, but insist that the Littlefield bill proposes not a regulation of interstate commerce by Congress, but abandonment of it to the States. This can not be conceded. Some of the cases which I have heretofore cited, and particularly the decision in *re Rahrer*, are directed specifically to this point. I earnestly call attention again to the paragraph of Chief Justice Fuller's decision affirming the constitutionality of the Wilson law, in which he emphatically disposes of the contention of the appellant in that case that this was a delegation to the States of power to regulate interstate commerce:

Congress did not use terms of permission to the State to act, but simply removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.

I now come to the objection which is urged against the pending bill in which its opponents claim that the Wilson law goes as far as it is competent for Congress to go in the matter of subjecting intoxicating liquors imported from one State into another to the jurisdiction of the State into which they are shipped. In other words, it is contended that the right to import intoxicating liquors for one's personal use is a right derived from the Constitution of the United States which can not be impaired or destroyed by legislation.

It is conceded by those who make this claim that they think they find their authority for this doctrine in the decision of the Supreme Court in the case of *Vance v. Vandercook*, reported in 170 U. S., 438:

But the right of persons in one State to ship liquors into another State to a resident for his own use is derived from the Constitution of the United States, and does not rest on the grant of State law.

I call attention, in this connection, to the fact that from the case of *Brown v. Maryland* clear down to and including the original-package

case of *Leisy v. Hardin*, it was specifically stated by the Supreme Court that an importer of interstate or foreign packages of merchandise had the constitutional right not only to import such merchandise untrammelled by State regulations or prohibitions, but that he also had the constitutional right to sell such imported merchandise in the original unbroken packages.

In the *Leisy v. Hardin* case it was repeatedly held, and in fact the crux of the decision was that a man had the constitutional right to sell imported liquors in the original unbroken package, State regulations to the contrary notwithstanding. By the passage of the Wilson law Congress divested such imported packages of their interstate commerce character upon their arrival within the State, and the law was held to be constitutional. When, however, the exact language of the law was before the court for its interpretation, it was held that the words employed did not permit State jurisdiction to attach until after delivery to the consignee. This interpretation defeated a part of the intention of Congress and the people, but was occasioned by faulty terminology. But it is contended on the other side that, while Congress might deprive an importer of the right to sell the merchandise in the original unbroken package, this is but an incident of the interstate commerce transaction, and it is not competent for Congress to pass any regulation which would interfere with the delivery of such merchandise to the consignee.

Were I not confident that every member of this committee is familiar with the language employed in numerous interstate commerce cases bearing directly upon the inseparability of the right of sale from the right of importation under State regulations or prohibitions, I would mass an array of citations from *Brown v. Maryland* down covering that specific point. I have stated that under the power of Congress it was competent for it to prescribe the manner in which imported articles should become "commingled with the mass of property within the State." Down to the passage of the Wilson law, imported intoxicating liquors were held not to have become commingled with the mass of property within the State, and therefore subject to State jurisdiction, until after their delivery to the consignee and the first sale by him in the original unbroken package.

By the passage of the Wilson law, as interpreted by the Supreme Court in the *Rhodes v. Iowa* case, Congress set forward the time when State jurisdiction could attach, by divesting intoxicating liquors of their interstate-commerce character after their arrival in the State and before sale. Our contention is that under its plenary powers Congress can still further set forward this period of time and subject intoxicating liquors to the jurisdiction of the State into which they are shipped upon their arrival within the State, both before and after delivery. Now, in view of all these facts, the decision of the Supreme Court in the *Vance v. Vandercook* case is readily understood. They had held in the *Rhodes* case that, under the language of the Wilson law, Congress did not submit imported intoxicating liquors to the jurisdiction of the State into which they were shipped until after they were delivered to the consignee.

The specific point at issue in the *Vance v. Vandercook* case was the right of a person to import liquors from another State for his own personal use. The court held, as above quoted, that this right was derived from the Constitution of the United States and did not rest on

the grant of State law. There is nothing in that language, even if it were not the supreme law of the land, which we feel disposed to controvert, nor is there anything discomfiting to us in our endeavor to secure the passage of this bill except in so far as members may be misled by misinterpreting the doctrine which we believe it affirms. Such a right we concede does not rest on the grant of the State law. Such a right we concede is derived by implication from the Constitution of the United States, and we contend that if so it must be under some article or section of that instrument.

There is no such article or section to which the opponents of this measure can point except the eighth section of article one, which delegates to Congress power to regulate commerce with foreign nations, among the several States, and with the Indian tribes. There is no suggestion in this section of an inalienable right to import intoxicating liquors for one's personal use which Congress, under its plenary power to regulate interstate commerce, can not directly control or regulate or prohibit. This contention of ours against the inalienability of such a right is given additional color by the decision in the *Mugler v. Kansas* case, wherein the court held that the right to manufacture intoxicating liquors for one's personal use was not an inalienable right and could be abridged by legislation, and property used for such unlawful manufacture could be confiscated. In *Kidd v. Pearson* it was held that a citizen had no right to manufacture intoxicating liquors contrary to the laws of his commonwealth even when such liquors were intended solely for exportation without the State. The Supreme Court has further held, in the *Crowley v. Christensen* and other cases, that the right to sell intoxicating liquors, so far as such a right exists, does not inhere in a citizen of a State or of the United States.

I have carefully sought information on this point, and I know of no State that directly attempts to forbid the personal use of intoxicating liquors. During the course of the previous questioning by members of the committee, I hurriedly adverted to the reason for this. It must be confessed all round that all this legislation which is directed against the manufacture and sale of intoxicating liquors is intended to minimize their use and the evils that are known to flow therefrom, and of which even the Supreme Court itself has repeatedly taken cognizance. It is asked, then, why not limit the operations of this proposed bill so that liquor intended for personal use shall be exempt. The reason for this is that we believe that the States which know their conditions and their needs, and are best able to provide for the safety, health, and morals of their people, ought to have absolute and untrammelled control of this subject-matter, and it is due from Congress to cooperate to that end and thus furnish what Mr. Justice Johnson called, in his concurrent opinion in the *Gibsons v. Ogden* case, "a frank and candid cooperation for the general good."

We therefore earnestly urge the committee favorably to recommend this bill in its present form without qualifying amendment, as we believe that all the interests of their citizens will be safe in the hands of the various States in the Union. I trust that the members of this committee are not to be swayed by the threats that have been made by the opponents of this measure, when dire vengeance at the polls has been suggested as the price of friendliness to this bill, for, without entering into detail, I may say that if the opposition proposes

to take that tack it may be that they shall drive the proponents of this measure, if their prayer is granted, to take active steps to preserve harmless the men who supported this fair and reasonable contention of the States for control of this important subject so vital to their welfare.

In this connection I need only say in passing that recent experiences in Ohio and some other States in the Union, where our forces have been mobilizing and have been trained in the duties of good citizenship, give some color to our statement that we think we shall be able effectively to stand by the men who do right and do not ignore the earnest and reasonable plea of the States for redress along this line.

During the course of the hearing, the opponents of this measure stated that the census of the United States showed that men who drank were better risks for life insurance companies than those who do not, and, as proof of the falseness of this statement, I submit the following testimony from various companies:

Below we give the opinions of various insurance companies as to the superiority of total-abstinence risks.

Question. As a rule, other things being equal, do you consider the habitual user of intoxicating beverages as good an insurance "risk" as the total abstainer? If not, why not?

Company.	Answer.
Ætna Life	No. Drink diseases the system and shortens life.
Alpha Life	No. Drink ruins health.
American Legion of Honor	No. Statistics show them not equal risks.
Bankers' Life	No; for habit is liable to grow.
Berkshire Life	No. Drink destructive to health.
Brooklyn Life	No.
Chenango Mutual Benefit	No. More dangerous in acute diseases.
Citizens' Mutual Life	No. Abstainers most desirable.
Covenant Mutual Life	Excessive use injures system and shortens life.
Dominion Life	No. Weakens constitution to resist disease.
Equal Rights Life Association	No.
Equitable Mutual Life and Endowment Association	No. Drink impairs vitality; less likely to throw off disease.
Fidelity Mutual Life Association	No. Less vitality and recuperative powers.
Hartford Life	No. Moderate use lays foundation for disease.
Home Friendly Society	No. Because of far greater death rate.
Knights of the Maccabees	No. Drink tends to destroy life.
Knights Templar and Masons Life Indemnity	No. Drink lessens ability to overcome disease.
Knights Templar and Masonic Mutual Aid Association	No. Total abstainer the better risk.
Manhattan Life	Depends on quantity used.
Manufacturers' Temperance and General Life	No. Experience shows longevity of abstainers greater.
Masonic Life Association of Western New York	No. Twenty-two years' experience shows them short-lived.
Massachusetts Mutual Life	No. Drink causes organic changes. Reduces expectation of life nearly two-thirds.
Michigan Mutual	No. Drink dangerous to health and longevity.
Mutual Life	No.
New York Life	No.
Odd Fellows' Mutual Benefit Society	No.
Order of Scottish Clans	No. More liable to colds, bronchial troubles, etc.
Pacific Mutual Life	No. Predisposes to disease.
Protective Life Association	No. Drink lessens powers to resist disease.
Provident Savings Life Assurance Society	No. Drink cuts short life expectation.
Provincial Provident Institution	No. Less resistance to disease and more liable to accident.
Register Life and Annuity	No.
Royal Templars of Temperance	No. Death rate much lower among abstainers.
Royal Union Mutual Life	No. Apt to exceed "Anstie's limit."
Security Mutual Life	No. Drink shortens life.
Sun Life Assurance	No. Drink injures constitution. Habit apt to grow.
Union Central Life	No. Use tends to shorten life.
Union Life	No.
Union Mutual Life	No. More likely to drink to excess.
United States	No. Use affects heart, stomach, liver, and kidneys.
Washington Life	Depends on age and amount used.

During the hearing some statements were also made by the opponents of this measure, concerning the ill effects of the Sunday closing law in Missouri. In refutation of these statements I present the following statistics from Missouri, showing the diminution of crime and other good results of the Sunday closing law:

Sunday closing decreases Sabbath crime 40 per cent—Police figures from five cities show saving in criminal costs of \$27,000 in one year—Arrests for all misdemeanors and felonies less in 1905 than in preceding years—St. Louis's financial gain by putting lid on saloons amounted to \$18,000—Authorities report moral tone of cities greatly benefited by law enforcement—Reports from whole State show results are general.

[Republic special.]

JEFFERSON CITY, March 24.—Enforcement of the Sunday law during 1905 in cities formerly run "wide open" has, according to information gathered by Statisticians J. H. Nolan and A. T. Edmonstone, of the State bureau of statistics, saved to those five cities in a year's time \$27,956 in criminal costs, and reduced all crime about 20 per cent.

Sunday crime, when considered alone, has been reduced 40 per cent. The saving in criminal costs would alone be favorable argument for this good government had there been no moral benefits derived and did not wives and children gain thereby through receiving money for clothes and food and other necessities which formerly on Sundays passed over saloon bars.

In St. Louis alone the saving in criminal costs in one year represents more than enough to construct a hospital adequate to house 100 consumptives and provide them with food, fuel, and medicine for 100 days. Careful estimates based on returns made by the St. Louis police department show that the saving there for one year in criminal costs was \$18,220.

If the citizens would set aside this sum for a tuberculosis sanitarium it would only require \$12,000 to erect the eleemosynary institution, and \$6,200 to run it for the 100 days, and there would still be left \$22 to be used for emergencies.

The police of five cities, St. Louis, Kansas City, St. Joseph, Sedalia, and Chillicothe, furnished the figures which are used in the following summaries:

RESULTS IN ST. LOUIS.

The returns from the police of St. Louis are given first. In 1904 a total of 4,226 arrests were made on Sundays for misdemeanors, which, at an average of \$10 each, cost the citizens \$42,260. In 1905 the arrests on Sundays for misdemeanors sank to 3,514, which, at \$10 each, cost \$35,140, a decrease of 712 arrests and of \$7,120 in costs.

The police records reveal that 1903 was the banner year in St. Louis for arrests for felonies committed on Sundays, and that there were 552 of such violations. Two years later, 1905, found a decrease to 441, and this was a year which had fifty-three Sundays, one more than is generally the case. The decrease is 111.

The average cost of a felony case is \$100, which means that the decrease in criminal cost in felony cases was \$11,100. With the saving in misdemeanors the total decrease to St. Louis was \$18,220.

KANSAS CITY FIGURES.

Figures furnished by John Hayes, chief of police of Kansas City, show that the enforcement there of the Sunday law has not only saved this metropolis several thousand dollars in criminal costs, but has brought about much moral good. In 1903 the total arrests on Sunday for misdemeanors reached the high figures of 1,925. The next year saw a slight improvement, but in 1905 there was a still better state of affairs, as only 1,383 arrests were made, and this with 53 Sundays in the year.

The figures of Chief Hayes show other improvements. In 1903 on Sundays in Kansas City there were 7 serious assaults, as compared to only 1 recorded for the Sundays of 1905. Six murders were committed on the Sundays of 1903 and 6 on the Sundays of 1904, with none for the Sundays of 1905. On the Sundays of 1903 there were 1,130 arrests for common disturbances; in 1904, 1,050, and in 1905 just 678. For discharging firearms in 1903 there were 6 arrests; 1904, 10 arrests, and 1905, 1 arrest. For destruction of property in 1903 there were 25 arrests; in 1904, 29, and in 1905 the total was 22. On the Sundays of 1904 there were 10 arrests for "canning beer," and on the Sundays of 1905 not one. For gambling 376 arrests were made on the Sundays of 1903, and on the Sundays of 1905, 257.

RESULTS IN ST. JOSEPH.

Good results are recorded in St. Joseph in 1905 from the enforcement of the Sunday law. In 1903 17 arrests occurred for felonies; in 1904, 15, and on the Sundays of 1905, 7. Two homicides took place on Sunday in 1904, and in 1905 not one. On Sundays in 1903 there were 195 apprehensions for intoxication, and on the Sundays of 1905, 170. For ordinary disturbances, Sunday arrests were 128 in 1904 and 103 in 1905. For careless driving on Sundays of 1903 7 arrests were made, with 2 for 1905. For miscellaneous offenses growing out of the free use of intoxicants, the arrests on Sundays of 1903 were 22, and on Sundays of 1905, 6.

SEDALIA IMPROVEMENTS.

Marked improvement was shown in Sedalia during 1905 over both 1903 and 1904 because of the rigid enforcement of the Sunday law. The Sabbaths of 1903 had 41 arrests for misdemeanors; the Sabbaths of 1904, 35, and the Sabbaths of 1905, 24. On Sundays in 1903 there were 134 arrests in Sedalia for drunkenness, and only 51 for the Sundays of 1905.

The law-enforcing régime has benefited Chillicothe, the police say. In 1903 2 Sunday arrests were made for felonies and 3 for common assaults, but on the Sundays of 1905 there were no arrests for either of these offenses. The police records for 1904 give 4 arrests for Sunday disturbances and for the Sundays of 1905 3. For other offenses charged to the Sundays of 1903 65 arrests are credited; 1904, 43 arrests, and on the Sundays of 1905, 27.

RESULTS IN THE AGGREGATE.

The police records of every city in the State show a similar improvement for 1905 over either 1903 or 1904. The following table gives the estimated saving in criminal costs for the cities mentioned above:

St. Louis.....	\$18,220
Kansas City.....	6,570
St. Joseph.....	2,050
Sedalia.....	685
Chillicothe.....	430
Total.....	27,955

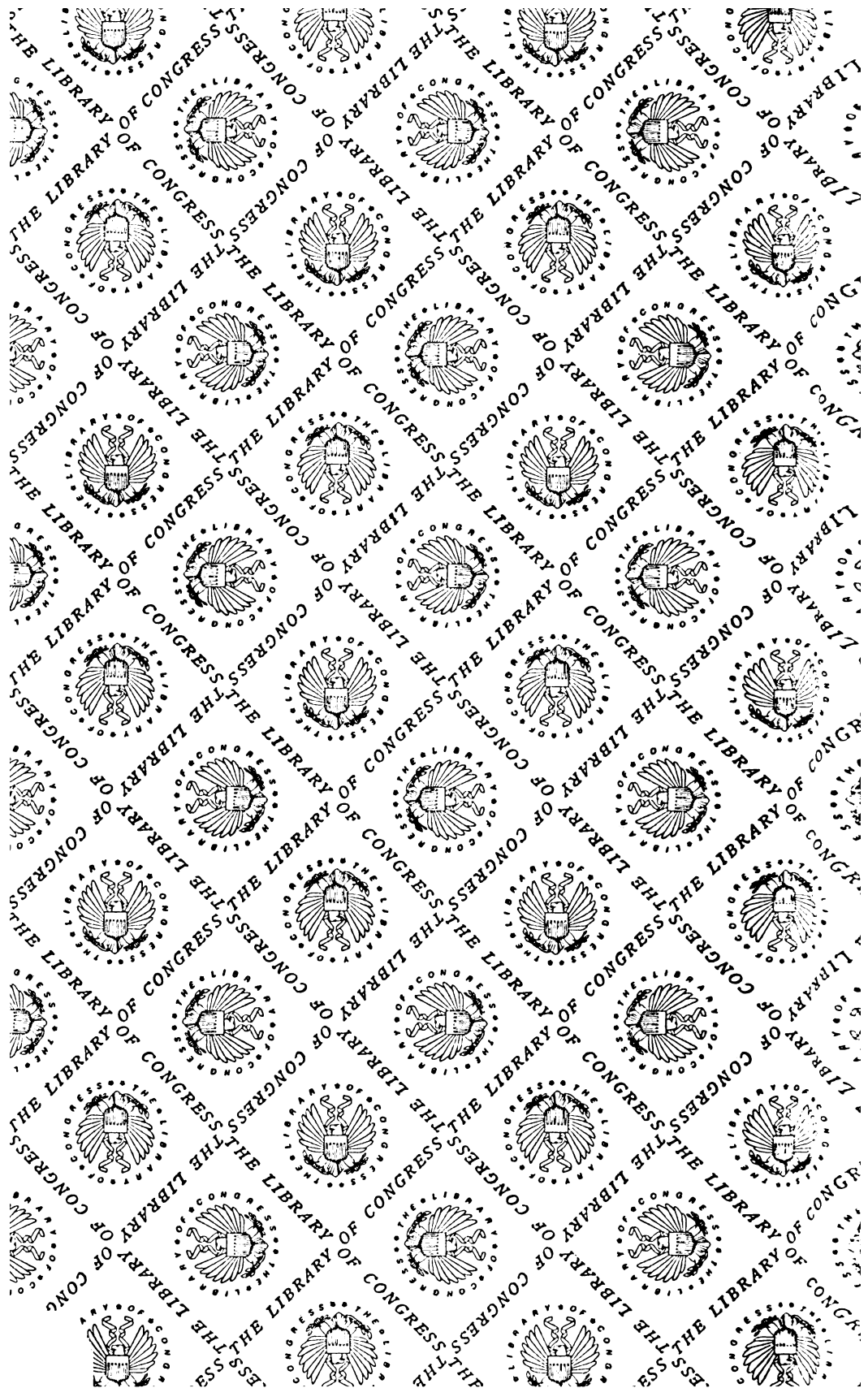
Concerning the effects of prohibition in the State of Kansas I quote the following clipping from the Kansas City Star:

Of the 105 counties in Kansas only 21 have any paupers. Twenty-five counties have no poorhouses, 35 have their jails absolutely empty, and 37 have no criminal cases on their dockets.

The beneficent effects of prohibition in the State of Maine have been set forth by the gentleman from Maine, who is a member of this committee, in a very able article on the subject of prohibition in Maine, which was printed in the Philadelphia Record a few years ago. And his statements have been corroborated by Senators and by governors of that State.







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